Office-Supreme Court, U.S.
FILED
FEB 17 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-647

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

DONALD J. KIRKPATRICK,

Petitioner,

—v.—

CHRISTIAN HOMES OF ABILENE, INC., and the 326th DISTRICT COURT OF TAYLOR COUNTY, TEXAS,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

JOINT APPENDIX

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RHODES, DOSCHER
& HEATHERLY
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Abilene, Texas 79601
(915) 677-2493

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Petition for Certiorari filed October 12, 1982
Certiorari Granted January 17, 1983

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Notes: In the interest of preserving the privacy of third parties, throughout this appendix, the natural mother and her family are referred to only by their initials. The child is referred to as "Baby Girl S." The family's address has also been deleted from the record.

The Attorney General of Texas has been consulted in connection with the preparation of this Appendix and has no objection to its contents.

RELEVANT DOCKET ENTRIES

Cause No. 5038-C

1.	Original Petition to Terminate Parent-Child Relationship	Jan. 15, 1981
2.	Mother's Affidavit of Relinquishment of Parental Rights to Licensed Child-Placing Agency	Jan. 16, 1981
3.	Affidavit of Status	Jan. 16, 1981
4.	First Amended Original Petition to Terminate Parent-Child Relationship	Jan. 16, 1981
5.	Statement of Paternity	Feb. 3, 1981
6.	Respondent's Original Answer	Feb. 3, 1981
7.	Original Petition for Voluntary Legitimation of a Child	Feb. 3, 1981

8.	Motion for Appointment of Temporary Managing Conservator	Feb. 5, 1981
9.	Cross Respondent's Original Answer	Feb. 23, 1981
10.	Managing Conservator's Refusal to Consent to Voluntary Legitimation by Natural Father	March 2, 1981
11.	Natural Mother's Refusal to Consent to Voluntary Legitimation by Natural Father	March 9, 1981
12.	Statement of Paternity (Second One Filed)	March 11, 1981
13.	Order for a Social Study	Apr. 1, 1981
14.	Social Study	June 16, 1981
15.	First Amended Original Petition for Legitimation of a Child	Aug. 21, 1981

16. Appointment of Guardian Ad Litem for R L S — Aug. 25, 1981

17. Appointment of Guardian Ad Litem for Baby Girl S — Aug. 25, 1981

18. Decree of Termination and Order Denying Voluntary Legitimation — Sept. 3, 1981

19. Motion and Order for Sealing File — Sept. 8, 1981

20. Notice of Filing Request for Findings of Fact and Conclusions of Law — Sept. 9, 1981

21. Request for Findings of Fact and Conclusions of Law — Sept. 10, 1981

22. Findings of Fact and Conclusions of Law — Sept. 24, 1981

23. Objections to Findings of Fact and Conclusions of Law or Amended Findings of Fact and Conclusions of Law — Sept. 25, 1981

24.	Notice of Appeal	Oct. 1, 1981
25.	Cost Bond	Oct. 1, 1981
26.	Designation of Material to be Included in the Transcript	Oct. 2, 1981
27.	Order Overruling Request for Additional Findings of Fact and Conclusions of Law	Oct. 6, 1981
28.	Designation of Additional Material to be Included in the Transcript	Oct. 7, 1981
29.	Transcript	Oct. 7, 1981
30.	Opinion of the Texas Court of Civil Appeals	Feb. 11, 1982
31.	Order - Texas Supreme Court Denying Writ of Error	June 16, 1982
32.	Order - Texas Supreme Court Denying Motion for Rehearing	July 14, 1982

NO. 5038-C

IN THE INTEREST	X	IN THE 326TH
OF BABY GIRL	X	DISTRICT COURT
S	X	IN TAYLOR COUNTY,
A CHILD	X	TEXAS

ORIGINAL PETITION TO TERMINATE PARENT-CHILD RELATIONSHIP

This suit is brought by Christian Homes of Abilene, Inc. whose residence is 242 Beech Street, Abilene, Texas. Petitioner is an agency authorized by the State Department of Human Resources of Texas to place children for adoption.

No court has continuing jurisdiction of this suit nor of the child who is the subject of this suit.

The following child is the subject of this suit:

NAME: Baby Girl S
SEX: Female
BIRTHPLACE: Abilene, Taylor County, Texas
BIRTH DATE: January 11, 1981
PRESENT RESIDENCE: Abilene, Taylor County, Texas

The mother of the child is R L S , whose age is 16, whose birthdate is October 1, 1964, and whose residence is

.

No service is necessary at this time.

The child is not legitimate as to any man. An affidavit of status, executed by the mother is attached hereto. Based on the affidavit of status executed by the mother, petitioner alleges that the father of the child is Donald J. Kirkpatrick, whose birthdate

is April 8, 1956, and whose address is RR #1, York, Nebraska 68467. Serve him at this address. The child is not the legitimate child of the father in that the child was not born or conceived before or during a marriage of the mother and father or not born or conceived before or during an attempted marriage of the mother and father in apparent compliance with the laws of this state or another state or nation.

The father has a right to legitimate the child by filing a statement of paternity with the State Department of Human Resources and petitioning the Court for legitimation, as provided in Sec. 13.01 (b), Texas Family Code, provided, however, the Court consents

to the father's attempt to legitimate the child. If the father files this statement of paternity and secures the Court's consent to legitimate the child, he shall have the rights and duties of a parent, but if he neglects or refuses to do so, he shall have no rights in and to the child.

The guardian of the estate of the child is: NONE.

No property is owned or possessed by the child.

Termination of the parent-child relationship between R L S , the natural mother, and the child is in the best interest of the child and such termination is requested. As further grounds for termination, Petitioner alleges that this parent will execute

after this suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided in Sec. 15.03, Texas Family Code. This affidavit of relinquishment is attached to the petition or will be filed herein.

Termination of the parent-child relationship between Donald J. Kirkpatrick, the natural father, and the child is in the best interest of the child and such termination is requested.

The parent-child relationship between the child and the natural father does not exist in law nor in fact. It is in the best interest of the child that all rights, privileges, duties, and powers, if any there be, of the natural father with respect to the

child, be terminated and such termination is requested.

As grounds for termination of these rights Petitioner alleges that this parent has voluntarily and with knowledge of the pregnancy abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care during the period of abandonment before the birth of the child and remained apart from the child or failed to support the child since the birth, Section 15.02 (H).

Christian Homes of Abilene, Inc., has been or will be designated Managing Conservator in an affidavit of re-

linquishment executed by the mother and such appointment is in the best interest of the child.

Petitioner requests the court to appoint a guardian ad litem to represent the interest of the child.

PRAYER

Petitioner prays that citation be issued to all persons entitled to citation under the law.

Petitioner prays that the Court enter judgment in accordance with the requests and allegations above.

Petitioner prays for general relief.

/s/ Charles E. Meyers
Attorney for
Petitioners
Suite 104, Citizens
Natl. Bank
Abilene, Texas

CAUSE NO. 5038-C

IN THE INTEREST OF	X	IN THE 326TH
BABY GIRL S		DISTRICT COURT IN
	X	
A CHILD		TAYLOR COUNTY,
	X	TEXAS

MOTHER'S AFFIDAVIT OF RELINQUISHMENT OF PARENTAL RIGHTS TO LICENSED CHILD-PLACING AGENCY

STATE OF TEXAS

COUNTY OF TAYLOR

Before me, the undersigned authority, on this day personally appeared R L S , who, being by me duly sworn, in the presence of the undersigned credible witnesses upon oath stated:

"My name is R L S . My age is 16 years. My address is .

I am the mother of a child whose name

is Baby Girl S and whose birthdate is January 11, 1981.

"I am not presently obligated by Court order to make payments for the support of the child.

"A full description and statement of value of all property owned or possessed by the child is as follows: NONE.

"The child is not the legitimate child of the father and I have executed an Affidavit of Status of Child. The natural father of the child is Donald J. Kirkpatrick and his address is RR #1, York, Nebraska 68467.

"It is in the best interest of my child that the child be placed for adoption in a suitable home by an agency licensed by the Texas Department of

Human Resources to place children for adoption. I therefore designate Christian Homes of Abilene, Inc., as Managing Conservator of the child. I have been informed of my parental rights, powers, duties, and privileges. I consent to the placement of the child for adoption by this agency.

"I fully understand that a lawsuit has been filed in the 326th District Court of Taylor County, Texas, to terminate forever the parent-child relationship between me and my child is in the best interest of the child. I understand that by executing this affidavit, I make this termination possible. With this in mind, I hereby

declare that this Affidavit of Relinquishment of Parental Rights is and shall be final, permanent, and irrevocable. I FULLY UNDERSTAND THAT IF I CHANGE MY MIND AT ANY TIME, I CAN NEVER FORCE THE AGENCY TO DESTROY, REVOKE, OR RETURN THIS AFFIDAVIT AND THAT I CANNOT TAKE BACK OR UNDO THIS AFFIDAVIT IN ANY WAY.

"It is in the best interest of my child that this by my last parental act and deed. Not wishing to appear or be cited in the termination suit, filed under Cause No. 5038-C, Taylor County, Texas, 326th District Court, and having received a copy of the Original Petition to terminate my rights, I hereby waive the right to issuance, service, and

return of all process in the suit to terminate the parent-child relationship between the child and me without further notice to me. I FULLY UNDERSTAND THAT I WILL NOT BE INFORMED FURTHER ABOUT THIS SUIT."

/s/ R L S
Affiant

WITNESS:

/s/ Judy Roysden
607 Avondale
Merkel, TX

/s/ Brenda Martin
1326 Briarwood
Abilene, TX

Subscribed and sworn to before me by said affiant in the presence of the foregoing credible witnesses on this day, to certify witness my hand and

and seal of office this 16th day of January, 1981, at 9:35 o'clock.

/s/ Peggy McDermed
Notary Public, In and
For Taylor County,
Texas

My commission expires
9/2/81.

CAUSE NO. 5038-C

IN THE INTEREST OF X IN THE 326TH DIS-
BABY GIRL S X TRICT COURT IN
A CHILD X TAYLOR COUNTY,
TEXAS

AFFIDAVIT OF STATUS

STATE OF TEXAS

COUNTY OF TAYLOR

Before me, the undersigned authority, on this day personally appeared R L S , who, being by me duly sworn, in the presence of the undersigned credible witnesses upon oath stated:

"I am the mother of Baby Girl S , a female child born to me on January 11, 1981, in Taylor County, Texas.

"I am not and have never been married to the father of the child, and we never attempted to marry each other under the laws of any state or nation. Paternity

of the child has not been established under the laws of any state or nation.

"The name of the father is Donald J. Kirkpatrick, and his address is RR #1, York, Nebraska 68467.

/s/ R L S , Affiant

WITNESSES:

/s/ Judy Roysden
Signature

607 Avondale Merkel, Tx
Address

/s/ Brenda Martin
Signature

1526 Briarwood, Abilene, Tx
Address

Subscribed and sworn to before me by said affiant in the presence of the foregoing credible witnesses on this day, to certify which witness my hand and seal of office this 16th day of January, 1981, at 9:35 a.m. o'clock.

/s/ Peggy McDonald
Notary Public, In and For
Taylor County, Texas

My commission expires
9/2/81.

CAUSE NO. 5038-C

IN THE INTEREST OF	X	IN THE 326th DIS-
BABY GIRL S	X	TRICT COURT IN TAY-
A CHILD	X	LOR COUNTY, TEXAS

FIRST AMENDED ORIGINAL PETITION
TO TERMINATE PARENT-CHILD RELATIONSHIP

This suit is brought by Christian Homes of Abilene, Inc. whose residence is 242 Beech Street, Abilene, Texas. Petitioner is an agency authorized by the Texas Department of Human Resources to place children for adoption.

No court has continuing jurisdiction of this suit nor of the child who is the subject of this suit.

The following child is the subject of this suit:

NAME: Baby Girl S
BIRTHPLACE: Abilene, Taylor County, Texas
BIRTH DATE: January 11, 1981
PRESENT RESIDENCE: Abilene, Taylor County, Texas
SEX: Female

The mother of the child is R L S , whose age is 16, and whose residence is

.

No service is necessary at this time.

The child is not legitimate as to any man. An Affidavit of Status, executed by the mother is attached hereto.

Based on the Affidavit of Status executed by the mother, petitioner alleges that the father of the child is Donald J. Kirkpatrick, who resides at RR #1, York, Nebraska 68467. No service is necessary at this time.

The child is not the legitimate child of the father in that the child was not born or conceived before or during a marriage of the mother and father or not born or conceived before or during an attempted marriage of the mother and father in apparent compliance with the laws of this

state or another state or nation.

The father has a right to legitimate the child by filing a statement of paternity with the Texas Department of Human Resources and petitioning the court for legitimation, as provided in Sec. 13.01 (b), Texas Family Code, provided, however, the Court consents to the father's attempt to legitimate the child. If the father files this statement of paternity and secures the Court's consent to legitimate the child, he shall have the rights and duties of a parent, but if he neglects or refuses to do so, he shall have no rights in and to the child.

The guardian of the estate of the child is: NONE.

No property is owned or possessed by the child.

Termination of the parent-child relationship between R L S , the

natural mother, and the child is in the best interest of the child and such termination is requested. As further grounds for termination, Petitioner alleges that this parent will execute after this suit is filed an unrevoked or irrevocable Affidavit or Relinquishment of Parental Rights as provided in Sec. 15.03, Texas Family Code. This Affidavit of Relinquishment is attached to the petition or will be filed herein.

Termination of the parent-child relationship between Donald J. Kirkpatrick, the natural father, and the child is in the best interest of the child and such termination is requested.

The parent-child relationship between the child and the natural father does not exist in law or in fact. It is in the best interest of the child that all rights, privileges, duties, and powers, if any

there be, of the natural father with respect to the child, be terminated and such termination is requested.

As grounds for termination of these rights Petitioner alleges that this parent voluntarily and with knowledge of the pregnancy abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care during the period of abandonment before the birth of the child and remained apart from the child or failed to support the child since the birth. As further grounds for termination Petitioner alleges that the natural father has executed after this suit is filed an unrevoked or irrevocable Affidavit of Relinquishment of Parental Rights as provided in Sec. 15.03, Texas Family Code. This Affidavit of Relinquishment is attached to the petition

or will be filed herein.

Christian Homes of Abilene, Inc., has been or will be designated Managing Conservator in an Affidavit of Relinquishment executed by the mother and such appointment is in the best interest of the child.

Petitioner requests the Court to appoint a guardian ad litem to represent the interest of the child.

PRAYER

Petitioner prays that citation be issued to all persons entitled to citation under the law.

Petitioner prays that the Court enter judgment in accordance with the requests and allegations above.

Petitioner prays for general relief.

/s/ Charles E. Meyers
Attorney for Petitioner
Suite 104, Citizens National
Bank Building
Abilene, Texas 79601

No. 5038-C

IN THE INTEREST OF	X	IN THE DISTRICT
BABY GIRL S	X	COURT OF TAYLOR
A CHILD	X	COUNTY, TEXAS
		326TH JUDICIAL
		DISTRICT

STATEMENT OF PATERNITY

I, DONALD J. KIRKPATRICK, make the following statements on my oath;

"I was born April 8th, 1956, and am a resident of Route 1, York, Nebraska 68467. I acknowledge that I am the father of Baby Girl S , a female child, born to R L S in Taylor County, Texas, on the 11th day of January, 1981.

"I have never been legally married

to the mother of this child nor have she and I ever attempted to marry under the laws of any state or nation. To the best of my information and belief, the child is not the legitimate child of any other man and is therefore entitled to my financial support."

/s/ DONALD J. KIRKPATRICK

/s/ Deverne J. Noyd Witness

/s/ Mark A. Werner Witness

THE STATE OF NEBRASKA *
*
COUNTY OF YORK *

SUBSCRIBED and SWORN TO before me by the said DONALD J. KIRKPATRICK Affiant, and Deverne J. Noyd and Mark A. Werner, Witnesses, on this the 29th

day of January, 1981.

/s/ Lyle L. Murphy
Notary Public and for
York County, Nebraska.

NO. 5038-C

IN THE INTEREST OF	*	IN THE DISTRICT
	*	
BABY GIRL S	*	COURT OF TAYLOR
	*	
A CHILD	*	COUNTY, TEXAS
		326TH JUDICIAL
		DISTRICT

RESPONDENT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Respondent, DONALD J. KIRKPATRICK, and files this his Original Answer to the First Amended Original Petition to Terminate Parent-Child Relationship filed in the above-entitled and numbered cause by Petitioner, CHRISTIAN HOMES OF ABILENE, Inc., and would respectfully show unto the Court the following:

I.

Respondent denies each and every, all and singular, the allegations in Petitioner's suit to Terminate Parent-Child Relationship.

PRAYER

WHEREFORE, Premises Considered, Respondent prays that all relief prayed for by Petitioner be denied.

Respondent prays for general relief.

Respectfully submitted,

ROBINSON, HANNA, MOORE
& HOLLOWAY, INC.
P.O. BOX 3819, Abilene,
TX 79604
(915) 673-3792

By: /s/ SAM MOORE
Bar Number 14376000

ATTORNEYS FOR RESPONDENT,
DONALD J. KIRKPATRICK

NO. 5038-C

IN THE INTEREST OF	*	IN THE DISTRICT
BABY GIRL S	*	COURT OF TAYLOR
A CHILD	*	COUNTY, TEXAS
		326TH JUDICIAL
		DISTRICT

ORIGINAL PETITION FOR VOLUNTARY LEGITIMATION OF A CHILD

This suit is brought by DONALD J. KIRKPATRICK, Cross-Petitioner, who was born April 8, 1956, and resides at Route 1, York, Nebraska 68467. Cross-petitioner is the father of a child born out of wedlock.

The Court has continuing jurisdiction of this suit.

The following child is the subject of this suit:

NAME: Baby Girl S SEX: Female
BIRTHPLACE: Abilene, Taylor County, Texas
BIRTHDATE: January, 11, 1981
PRESENT RESIDENCE: Abilene, Taylor County, Texas

The mother of the child is R S , who is 16 years of age, and who resides at

Process should be served at that address.

Petitioner/Cross-Respondent, CHRISTIAN HOMES OF ABILENE, INC., should be served at 242 Beech Street, Abilene, Taylor County, Texas.

There are no court-ordered conservatorships, guardianships or other court-ordered relationships affecting the child in this suit.

There is no guardian of the person of the child. There is no guardian of the estate of the child.

No property is owned or possessed by the child.

Cross-Petitioner has executed an affidavit which is attached to and incorporated in this Petition for all purposes stating that he is the father of the child.

Cross-Petitioner has given notice to the mother of the child of this proceeding, as required by Sec. 13.01(a), Texas Family Code.

Cross-Petitioner requests the Court enter a consent to legitimation of the child. Cross-Petitioner requests the Court enter a decree declaring the

child to be the legitimate child of DONALD J. KIRKPATRICK, as authorized by Sec. 13.01, Texas Family Code.

Cross-Petitioner alleges that the best interest of the child would be served by the appointment of Cross-Petitioner as Managing Conservator of the child. Cross-Petitioner asks to be appointed Managing Conservator, as authorized by Sec. 14.01(a), Texas Family Code.

PRAYER

Cross-Petitioner prays that citation be issues to all persons entitled to citation under the law.

Cross-Petitioner prays that the Court enter judgment in accordance with the allegations above.

Petitioner prays for general relief.

Respectfully submitted,

ROBINSON, HANNA, MOORE &
HOLLOWAY, INC.
P.O. Box 3819
Abilene, TX 79604
(915) 673-3792

BY: /s/SAM MOORE
Bar Number 14376000

ATTORNEYS FOR CROSS-
PETITIONER,
DONALD J. KIRKPATRICK

THE STATE OF NEBRASKA *
*
COUNTY OF YORK *

The undersigned states under oath that "I am the Cross-Petitioner in the foregoing Petition for Voluntary Legitimation of a Child and that the fact and allegations stated in it are to the best of my information and belief true and correct."

/s/ DONALD J. KIRKPATRICK

SUBSCRIBED and SWORN TO before me by the said DONALD J. KIRKPATRICK on this 29 day of January, 1981.

/s/ LYLE L. MURPHY
Notary Public in and for
York County, Nebraska

CAUSE NO. 5038-C

IN THE INTEREST OF	*	IN THE 326TH
	*	
BABY GIRL S	*	JUDICIAL DISTRICT
	*	
A CHILD	*	COURT OF TAYLOR
	*	
	*	COUNTY, TEXAS
	*	

CROSS-RESPONDENT'S ORIGINAL ANSWER

Comes now Cross-Respondent, Christian Homes of Abilene, and in answer to Cross-Petitioner's Petition for Voluntary Legitimation of A Child, would respectfully show unto this Honorable Court as follows:

I.

Cross-Respondent admits that Cross-Petition is the father of the child born out of wedlock, to-wit:

NAME: Baby Girl S

BIRTHPLACE: Abilene, Taylor County, Texas
BIRTHDATE: January 11, 1981
PRESENT RESIDENCE: Abilene, Taylor County, Texas
SEX: Female

II.

Cross-Respondent admits that this Court has continuing jurisdiction of this suit and that there are not Court-ordered conservatorships, guardianships or other Court-ordered relationships affecting the child in this suit. Furthermore, there is no guardian of the person of the child, there is no guardian of the estate of the child and no property is owned or possessed by the child.

III.

Cross-Respondent admits that the mother of the above-specified child

is R L S , who is 16 years of age and who resides at

IV.

R L S , the natural mother of said child, refuses to consent to voluntary legitimation of said child by Cross-Petitioner.

V.

Christian Homes of Abilene, Inc., named Managing Conservator by R L S , of Baby Girl S , under Section 15.03(c)(1), Texas Family Code, does hereby refuse to consent to the voluntary legitimation of said child by Cross-Petitioner.

VI.

Cross-Respondent affirmatively states that it is not in the best interest of the above-specified child for this Court to consent to the legitimation of the child nor for this Court to appoint Cross-Petitioner Managing Conservator of the child.

VII.

As to the remaining allegations in Cross-Petitioner's Original Petition for Voluntary Legitimation Of A Child, Cross-Respondent has insufficient knowledge or information as to whether they are true or not and Cross-Respondent therefore denies such allegations.

VIII.

Cross-Respondent, Christian Homes of Abilene respectfully requests this Honorable Court to order the preparation of a Social Study into the circumstances and conditions of the child, the subject of this suit, as well as into the circumstances and conditions of the home of Cross-Petitioner, Donald J. Kirkpatrick, and the facilities of Cross-Respondent, Christian Homes of Abilene.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Cross-Respondent prays that this Court order the preparation of a Social Study into the circumstances and condition of the child, the subject of this suit,

as well as the circumstances and condition of the home of Cross-Petitioner, Donald J. Kirkpatrick, and the facilities of Cross-Respondent, Christian Homes of Abilene, and that upon final hearing herein this Court enter its Order:

(1) Denying each and every, all and singular, the relief sought by Cross-Petitioner, Donald J. Kirkpatrick;

(2) Terminating the parent-child relationship between Cross-Petitioner, Donald J. Kirkpatrick, and the child, the subject of this suit;

(3) Terminating the parent-child relationship between R L S , the natural mother, and the child, the

subject of this suit;

(4) Appointing Cross-Respondent, Christian Homes of Abilene, Temporary Managing Conservator of the child, the subject of this suit; and

(5) Granting such other and further relief as may be just and equitable.

Respectfully submitted,

RHODES, DOSCHER & HEATHERLY
104 Citizens Bank Building
Abilene, TX 79601
(915) 677-2493

By: /s/ Charles E. Meyers
State Bar No. 14759000

ATTORNEY FOR CROSS-RESPONDENT

NO. 5,038-C

IN THE INTEREST OF * IN THE 326TH JUDICIAL

BABY GIRL S * DISTRICT COURT OF

A CHILD * TAYLOR COUNTY, TEXAS

MANAGING CONSERVATOR'S REFUSAL TO CONSENT TO VOLUNTARY LEGITIMATION BY NATURAL FATHER

Come now, Christian Homes of Abilene, Inc., a licensed child placing agency, licensed under the laws of the State of Texas, and licensed by the Department of Public Welfare for Maternity Service and Adoptive Placement as well as other child care services, and upon oath, disposed and says in and through Nancy Miller, Director of Christian Homes of Abilene, Inc:

(1) R L S is the natural mother of Baby Girl S which child is more fully described in our Original Petition to Terminate the Parent-Child Relationship and all other rights, of any kind and nature between Baby Girl S and

R L S and Donald J. Kirkpatrick.

(2) I am aware of the efforts by Donald J. Kirkpatrick to voluntarily legitimate Baby Girl S under Section 13.21(a), Texas Family Code.

(3) Christian Homes of Abilene, Inc., named Managing Conservator by R L S in her Affidavit of Relinquishment of Parental Rights by Mother filed with this Court and executed by the mother on the 16th day of January, 1981, does hereby declare to this Court its refusal to consent to the voluntary legitimation of said child by the natural father, Donald J. Kirkpatrick.

(4) The refusal to consent to

voluntary legitimation of said child by Christian Homes of Abilene, Inc., is the voluntary and free declaration of Christian Homes of Abilene, Inc., and is intended to be effective for Sections 13.21(a), 13.21(b) and 13.21 (c), Texas Family Code.

WITNESSES:

/s/ Von French

/s/ Louise J. Burnett

Christian Homes of Abilene, Inc.
By: /s/ Nancy L. Miller

THE STATE OF TEXAS *

COUNTY OF TAYLOR *

BEFORE ME, the undersigned Notary Public, on this 2nd day of March, 1981, personally appeared Nancy Miller, the Affiant, and Von French and Louise J. Burnett, Witnesses, persons known to me, who subscribed to the above instrument.

The Affiant stated to me on oath that she signed the above instrument freely and voluntarily for the purposes stated in the instrument, and with full understanding of the meaning of the instrument and that she does not wish to revoke it.

/s/ Carol Huckabee
Notary Public in and for
The State of Texas

NO. 5038-C

IN THE INTEREST OF	*	IN THE 326TH
BABY GIRL S	*	JUDICIAL DISTRICT COURT,
A CHILD	*	TAYLOR COUNTY,
	*	TEXAS

NATURAL MOTHER'S REFUSAL TO CONSENT TO VOLUNTARY LEGITIMATION BY NATURAL FATHER

Comes now R L S , natural mother of Baby Girl S , Respondent in the above captioned and numbered cause, and after being placed under oath, disposes and says:

(1) I am the natural mother of Baby Girl S , more fully described in the Original Petition for Termination of Parent-Child Relationship filed in this cause by Christian Homes of Abilene, Inc.

(2) Donald J. Kirkpatrick is the natural father of the child.

(3) I was not married to Donald J. Kirkpatrick either at conception or at the birth of the child.

Nor have we ever attempted to marry under the laws of any state, nor are we married at the present time.

(4) I hereby exercise my statutory rights under Section 13.21(b)(3), Texas Family Code, to refuse my consent to the natural father's attempt to voluntarily legitimate the child who is made the subject of this suit.

(5) I hereby declare, again, as my free and voluntary decision, that Christian Homes of Abilene, Inc., be named Managing Conservator of the child

by this Court and that all rights of all parties be terminated to said child so that said child can be placed by Christian Homes of Abilene, Inc., for adoption.

I make this free and voluntary declaration of my refusal to consent to voluntary legitimation of Baby Girl S by Donald J. Kirkpatrick with the intention that said refusal to consent to the voluntary legitimation is applicable and is exercised under Sections 13.21(a), Section 13.21(b) and Section 13.21(c), Texas Family Code.

WITNESSES:

/s/ Linda Smith

/s/ Gail Walkington

/s/ R I S

KNOW ALL MEN BY THESE PRESENTS

BEFORE ME, the undersigned Notary Public, on this 6th day of March, 1981, personally appeared R L S , the Affiant, and Linda S. Smith and Gail Walkington, Witnesses, persons known to me, who subscribed to the above instrument.

The Affiant stated to me on oath that she signed the above instrument freely and voluntarily for the purposes stated in the instrument, and with full understanding of the meaning of the instrument and that she does not wish to revoke it.

/s/ Joseph J. Essay
Notary Public in and
for Lancaster County,
State of Nebraska

NO. 5038-C

IN THE INTEREST OF	*	IN THE DISTRICT
BABY GIRL S	*	COURT OF TAYLOR
A CHILD	*	COUNTY, TEXAS
	*	326TH JUDICIAL
	*	DISTRICT

STATEMENT OF PATERNITY

I, DONALD J. KIRKPATRICK, make the following statements on my oath:

"I was born April 8, 1956, and am a resident of Route 1, York, Nebraska 68467. I acknowledge that I am the father of Baby Girl S , a female child, born to R S in Taylor County, Texas, on the 11th day of January, 1981.

"I have never been legally married to the mother of this child nor have

she and I ever attempted to marry under the laws of any state or nation. To the best of my information and belief, the child is not the legitimate child of any other man and is therefore entitled to my financial support."

/s/ Donald J. Kirkpatrick

/s/ Deverne J. Noyd Witness

/s/ Mark A. Warner Witness

THE STATE OF NEBRASKA *
*
COUNTY OF YORK *

SUBSCRIBED and SWORN TO before me by the said DONALD J. KIRKPATRICK, Affiant, and Deverne J. Noyd and Mark A. Werner, Witnesses, on this the 28th day of February, 1981.

/s/ Lyle L. Murphy
Notary Public in and
for York County,
Nebraska

NO. 5,038-C

IN THE INTEREST OF	*	IN THE 326TH JUDI-
BABY GIRL S ,	*	CIAL DISTRICT COURT
A CHILD	*	OF TAYLOR COUNTY,
	*	TEXAS

ORDER

Came on this day to be considered Petitioner's request for a Court-ordered social study and the Court having considered said request is of the opinion that same should be granted.

IT IS THEREFORE ORDERED THAT J.L. Cole be and is hereby appointed investigator to make and prepare a social study covering the background, circumstances and condition of the Cross-Petitioner, Donald J. Kirkpatrick, and his home, bearing on the suitability of his home for the child the subject of this suit and for himself as a person seeking the legitimation of a child and the suitability of the child to

him and his home, such study to be contained in a written report filed herein by such investigator by the 2nd day of June, 1981.

IT IS FURTHER ORDERED that J.L. Cole be and is hereby appointed investigator to make and prepare a social study covering the background, circumstances, and condition of the child and of the Petitioner, Christian Homes of Abilene, Inc., as child placing agency, bearing on the suitability of such agency placing said child for adoption, such study to be contained in a written report filed herein by such investigator by the 2nd day of June, 1981.

SIGNED this 1st day of April, 1981.

/s/ Henry Strauss
JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record and all parties to the above cause in accordance with Rules 21a and 21b, Texas Rules of Civil Procedure, on this 13th day of March, 1981.

/s/ Charles E. Myers

NO. 5038-C

IN THE INTEREST OF	*	IN THE DISTRICT
	*	
BABY GIRL S	*	COURT OF TAYLOR
	*	
A CHILD	*	COUNTY, TEXAS
	*	
	*	326TH JUDICIAL
	*	
	*	DISTRICT

FIRST AMENDED ORIGINAL PETITION
FOR LEGITIMATION OF A CHILD

This suit is brought by Donald J. Kirkpatrick who is the father of the child the subject of this suit. Cross-Petitioner was born April 8, 1956 and resides at Route 1, York, Nebraska 68467. Cross-Petitioner is the biological father of Baby Girl S .

This Court has acquired and retained continuing jurisdiction of this suit

and of the child the subject of this suit as a result of Petitioner's action to terminate the parent-child relationship.

I.

The following illegitimate child the subject of this suit:

NAME: Baby Girl S
SEX: Female
BIRTHPLACE: Abilene, Taylor County, Texas
BIRTHDATE: January 11, 1981
PRESENT RESIDENCE: Abilene, Taylor County, Texas

II.

The mother of the child is R L S , whose age is 16 and whose residence is York, Nebraska.

The biological father of the child is Donald J. Kirkpatrick whose age is 25 and whose residence is Route 1,

York, Nebraska.

Persons having a court-ordered relationship with the child are:

NAME: Christian Homes of Abilene, Inc.
PRESENT RESIDENCE: 242 Beech Street, Abilene, Texas
RELATIONSHIP: Temporary Managing Conservator

III.

No property is owned or possessed by the child the subject of this suit.

IV.

The biological father of the child the subject of this suit has executed a Statement of Paternity, a copy of which is attached to and filed with this petition, and the parent-child relationship between the biological mother and the child has not been terminated by court decree.

V.

Although the consent of neither the mother nor the managing conservator has been obtained, it is in the best interest of the child that this legitimation petition be granted. Cross-Petitioner requests the Court to consent to this legitimation.

VI.

Petitioner seeks a decree designating the child the subject of this suit as the legitimate child of the father and the father as a parent of the child.

VII.

The best interest of the child the subject of this suit will be

served by the appointment of Donald J. Kirkpatrick as managing conservator, and Cross-Petitioner so requests. Cross-Petitioner further requests that appropriate orders be made for conservatorship and support of the child.

VIII.

Cross-Petitioner requests the Court to appoint a guardian ad litem to represent the interests of the child the subject of this suit.

X.

Cross-Petitioner requests the name of the child Baby Girl S be decreed to be J L Kirkpatrick.

XI.

A social study has already been prepared and filed with the Court.

XII.

It was necessary to secure the services of Sam Moore, a licensed attorney, to preserve and protect the child's rights. Cross-Respondent Christian Home of Abilene, Inc. should be ordered to pay a reasonable attorney's fee of $2,500.00 and a judgment should be rendered in favor of this attorney and against said Cross-Respondent; or, in alternative, such reasonable attorney's fees should be taxed as costs and be ordered paid directly to the undersigned attorney.

PRAYER

Cross-Petitioner prays for judgment establishing Donald J. Kirkpatrick to be the legitimate father of the child the subject of this suit and such child to be his legitimate child, that appropriate orders be made for conservatorship and support of the child, and that the child's name be decreed as above requested.

Cross-Petitioner prays for attorney's fees, costs, and general relief.

SIGNED this 21st day of August, 1981.

Respectfully submitted,

/s/ SAM MOORE
ATTORNEY FOR PETITIONER

ROBINSON, HANNA, MOORE & HOLLOWAY, INC.
P.O. Box 3819
Abilene, TX 79604

NO. 5038-C

IN THE INTEREST OF	*	IN THE 326TH
BABY GIRL S ,	*	DISTRICT COURT OF
A CHILD	*	TAYLOR COUNTY,
		TEXAS

APPOINTMENT OF GUARDIAN AD LITEM

It has been brought to the attention of the Court that there is need to appoint a guardian ad litem.

The Court appoints STAN BROWN, Abilene, Texas, as guardian ad litem, to represent the interests of R L S , a party to this action who is a minor.

This appointment shall be effective immediately and shall remain in effect during the pendency of this suit or until further order of the

Court.

SIGNED this 28 day of August, 1981.

/s/ B.J. Edwards

JUDGE PRESIDING

NO. 5038-C

IN THE INTEREST OF	*	IN THE 326TH
BABY GIRL S	*	DISTRICT COURT OF
A CHILD	*	TAYLOR COUNTY, TEXAS

APPOINTMENT OF GUARDIAN AD LITEM

It has been brought to the attention of the Court that there is need to appoint a guardian ad litem.

The Court appoints Malcolm Schulz as guardian ad litem to represent the interests of the child, the subject of this suit, Baby Girl S .

This appointment shall be effective immediately and shall remain in effect during the pendency of this suit or until further order of the

Court.

SIGNED, this 25 day of August, 1981.

/s/ Henry Strauss

JUDGE PRESIDING

NO. 5038-C

IN THE INTEREST OF	*	IN THE 326TH
BABY GIRL S ,	*	DISTRICT COURT
A CHILD	*	OF TAYLOR COUNTY, TEXAS

DECREE OF TERMINATION
AND ORDER DENYING VOLUNTARY LEGITIMATION

On the 28th day of August, 1981, trial on the merits was held in this cause.

Petitioner and Cross-Respondent, Christian Homes of Abilene, Inc., Abilene, Texas, appeared in person and by attorney.

Respondent and Cross-Petitioner, Donald J. Kirkpatrick, Rt. 1, York, Nebraska, 68467, appeared in person and by attorney.

Also, appearing was R L S , natural mother of Baby Girl S , and Stan Brown, appointed by the Court as guardian ad litem for the mother. Malcolm Schulz appeared as guardian ad litem for the minor child, Baby Girl S .

The Court, after examining all of the pleadings including the cross-action by Respondent, Donald J. Kirkpatrick, after listening to the evidence and argument of counsel, finds that it has jurisdiction of this cause and the parties. It finds that no other court has continuing exclusive jurisdiction of this cause at this time.

No jury was demanded, and all matters in controversy, including questions of fact and law, were submitted

to the Court. All persons entitled to citation were properly cited and before the Court at said hearing.

The Court finds that citation was duly and properly issued to Donald J. Kirkpatrick, the father of the child, who did not marry or attempt to marry the mother of the child. The father was informed of his right to legitimate the child and subsequently filed Cross-Petitioner's Original Petition for Voluntary Legitimation of a Child, which Cross-Action has been duly considered by the Court.

IT IS, THEREFORE, ORDERED AND DECREED that the Original Petition for Voluntary Legitimation of a Child filed in this cause by Donald J. Kirkpatrick

be and is hereby in all matters denied. The Court finds that the denial of Donald J. Kirkpatrick's Original Petition for Voluntary Legitimation of a Child is in the best interests of the child and the Court does hereby refuse to grant its consent under Section 13.21(c), Texas Family Code, to Cross-Petitioner's request for voluntary legitimation of Baby Girl S .

IT IS, THEREFORE, ORDERED AND DECREED that all rights in and to Baby Girl S which Donald J. Kirkpatrick may have had are hereby foreclosed and terminated.

The Court finds that the Petitioner has requested termination of the parent-child relationship which now exists between R L S and

Baby Girl S .

The Court finds that the natural mother of the child, R L S , has executed an irrevocable Affidavit of Relinquishment of Parental Rights as provided in Section 15.03., Texas Family Code, which Affidavit of Relinquishment, and the Affidavit of Child Status, were properly executed by the natural mother of said child and filed with the Petition in this cause.

The Court finds that termination of the parent-child relationship as between R L S and Baby Girl S would be in the best interest of the child.

IT IS, THEREFORE, ORDERED AND DECREED that the parent-child relation-

ship between R L S and Baby Girl S be and is hereby terminated.

The Court finds that the natural mother designated Christian Homes of Abilene, Inc., as managing conservator of the child in her Affidavit of Relinquishment.

The Court further finds that the best interest of the child will be served by appointing Christian Homes of Abilene, Inc., Abilene, Texas, as managing conservator of the child.

IT IS, THEREFORE, ORDERED AND DECREED that Christian Homes of Abilene, Inc., Abilene, Texas, be and is hereby appointed managing conservator of the child having all the rights, privileges, duties and powers of a managing conservator as set forth in

Section 14.02(b), Texas Family Code, and, specifically, the power to consent to the adoption of the child and to make placement of the child for the purpose of adoption.

The Court finds that Malcolm Schulz, a practicing attorney of the Bar of this Court, did serve as guardian ad litem for Baby Girl S in this proceeding.

IT IS, THEREFORE, ORDERED AND DECREED that Malcolm Schulz be paid as a cost of court the sum of $500.00 as a fee for his professional services rendered herein.

The Court finds that Stan Brown, a practicing attorney of the Bar of this Court, did serve as guardian ad litem for R L S , a minor, the

mother of Baby Girl S , in this proceeding.

IT IS, THEREFORE, ORDERED AND DECREED that Stan Brown be paid as a cost of court the sum of $500.00 as a fee for his professional services rendered herein.

The Court finds that the Respondent Cross-Petitioner has paid into the Registry of the Court funds in the amount of $700.00, and the Court is of the opinion that said funds should be refunded to Respondent Cross-Petitioner herein.

IT IS, THEREFORE, ORDERED AND DECREED that the funds in the amount of $700.00 presently held in the Registry of the

Court be refunded by the Clerk of the Court to the Respondent Cross-Petitioner.

One-half of all costs of court expended in this cause are adjudged against the Petitioner, Christian Homes of Abilene, Inc., and the remaining one-half are adjudged against Respondent, Donald J. Kirkpatrick, for which let execution issue.

IT IS DECREED that all relief requested in this cause and not expressly granted herein be and is hereby denied.

SIGNED AND ENTERED this 3 day of September 1981.

/s/ BILLY JOHN EDWARDS
Sitting for the 326th
District Court, Taylor
County, Texas

APPROVED:

/s/ Charles E. Myers
State Bar No. 14759000

/s/ Sam Moore - as to form only
State Bar No. 14376000

/s/ Stan Brown
State Bar No. 03145000

/s/ Malcolm Schulz
State Bar No. 17847000

NO. 5038-C

IN THE INTEREST	*	IN THE 326TH DISTRICT
OF	*	COURT OF TAYLOR
BABY GIRL S A child	* *	COUNTY, TEXAS

NOTICE OF FILING REQUEST FOR FINDINGS OF FACT AND CONCLUSION OF LAW

TO:

You are hereby notified that DONALD J. KIRKPATRICK, Respondent and Cross-Petitioner, in the above cause, has this day filed a request that Judge Edwards state in writing and file the conclusions of fact found by him separately from the conclusions of law, pursuant to the Texas Rules of Civil Procedure, Rule 296. A true and correct copy of such request is attached to this notice.

DATED September 9, 1981.

Respectfully submitted,

ROBINSON, HANNA, MOORE & HOLLOWAY, INC.

P.O. Box 3819
Abilene, TX 79604
(915) 673-3792

BY: /s/Sam Moore
Bar Number 14376000

ATTORNEY FOR RESPONDENT

NO. 5038-C

IN THE INTEREST	*	IN THE 326TH
OF BABY GIRL S	*	DISTRICT COURT
A Child	*	OF TAYLOR COUNTY, TEXAS

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent and Cross-Petitioner, DONALD J. KIRKPATRICK, in the above entitled and numbered cause, hereby makes and files his request that the judge of said court state in writing the conclusions of fact found by him separately from his conclusions of law, and file such findings of fact and conclusions of law with the clerk of said court in order that they shall constitute a part of the record of the above entitled cause.

Respectfully submitted,

ROBINSON, HANNA, MOORE &
HOLLOWAY, INC.
P.O. Box 3819
Abilene, TX 79604

By: /s/ SAM MOORE
Bar Number 14376000

Attorney for Respondent

No. 5038-C

IN THE INTEREST	:	IN THE 326th DISTRICT COURT OF TAYLOR
OF	:	COUNTY, TEXAS
BABY GIRL S A CHILD	,:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above captioned cause came on for trial before the Court without a jury on the 28th day of August, 1981. All parties and their attorneys were present. After considering the pleadings, the evidence, and the argument of counsel, the Court, in response to a request from the Respondent Cross-Petitioner, Donald J. Kirkpatrick, makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The child the subject of this suit is:

NAME: Baby Girl S SEX: Female
BIRTHPLACE: Abilene, Taylor County, Texas BIRTHDATE: January 11, 1981
PERMANENT RESIDENCE: Abilene, Taylor County, Texas

2. The mother of the child the subject of this suit is R L S .

3. The child the subject of this suit is not legitimate as to any man.

4. The natural father of the child the subject of this suit is Donald J. Kirkpatrick.

5. The natural mother of the child, R L S , has not consented to the voluntary legitimation of the child by the Respondent Cross-Petitioner, Donald J. Kirkpatrick.

6. The managing conservator of the child, Christian Homes of Abilene, Inc., has not consented to the voluntary legitimation of the child by the Respondent Cross-Petitioner, Donald J. Kirkpatrick.

7. It is not in the best interest of the child for this Court to consent to the legitimation of the child by the Respondent Cross-Petitioner Donald J. Kirkpatrick.

8. It is in the best interest of the child that the parent-child relationship between R L S and the child be terminated.

9. It is in the best interest of the child to appoint Christian Homes of Abilene, Inc., managing conservator of the child for the purpose of placing the child for adoption.

CONCLUSIONS OF LAW

1. The parent child relationship does not exist between the Respondent Cross-Petitioner, Donald J. Kirkpatrick, and the child the subject of this suit.

2. The child the subject of this suit should not be designated as the legitimate child of the father, Donald J. Kirkpatrick.

3. The father, Donald J. Kirkpatrick, should not be designated a parent of the child.

4. The parental rights of the natural mother R L S should be terminated.

5. Christian Homes of Abilene, Inc., should be appointed managing conservator of the child having all the rights, privileges, duties and powers of a managing conservator as set forth in Section 14.02 (b), Texas Family Code, and, specifically, power to consent to the adoption of the child and to make placement of the child for the purpose of adoption.

SIGNED this 24th day of September, 1981.

B. J. Edwards
JUDGE PRESIDING

Judge of the 104th District Court sitting for the 326th District Court.

NO. 5038-C

IN THE INTEREST * IN THE 326TH DISTRICT

OF BABY GIRL * COURT OF

S , A CHILD * TAYLOR COUNTY, TEXAS

OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND REQUEST FOR ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, Respondent Cross-Petitioner, Donald J. Kirkpatrick, and files this his objection to the findings of fact and conclusions of law filed September 24, 1981, and his request for additional or amended findings of fact and conclusions of law under the Texas Rule of Civil Procedure, Rule 298, V.A.T.S.

I.

Respondent Cross-Petitioner objects to paragraph seven of the Court's findings of fact wherein it is stated "it is

not in the best interest of the child for this Court to consent to the legitimation of the child by the Respondent, Cross-Petitioner, Donald J. Kirkpatrick," for the reason that the Court does not set forth the specific facts upon which it relied to find that it was not in the best interest of the child to consent to legitimation.

Respondent Cross-Petitioner requests the Court file amended or additional findings of fact and conclusions of law setting forth the specific fact or facts upon which it based its ruling that it is not in the best interest of the child to consent to legitimation.

II.

Respondent Cross-Petitioner objects to paragraph four of the Court's findings

of fact and requests the Court to amend the findings to state that all parties stipulated that Respondent Cross-Petitioner is the biological father of the child.

III.

Respondent Cross-Petitioner requests the court amend the findings of fact and state that Respondent Cross-Petitioner has filed a statement of paternity which was legally sufficient under Section 13.02 of the Family Code which was prima facie proof of paternity under Section 13.03 of the Family Code.

IV.

Respondent Cross-Petitioner requests the Court amend its findings of fact and state Respondent Cross-Petitioner voluntarily paid support for the

child to the District Clerk of Taylor County from February, 1981, to date of hearing.

WHEREFORE, PREMISES CONSIDERED Respondent Cross-Petitioner requests the Court amend the findings of fact and conclusions of law as requested and for other and further relief to which he may be entitled both at law and in equity.

Respectfully submitted,

ROBINSON, HANNA, MOORE & HOLLOWAY, INC.
P.O. Box 3819
Abilene, TX 79604
(915) 673-3792

BY: /s/ SAM MOORE
Bar Number 14376000

ATTORNEY FOR RESPONDENT CROSS-PETITIONER

NO. 5038-C

IN THE INTEREST	*	IN THE 326TH DISTRICT
OF BABY GIRL	*	COURT OF
S , A CHILD	*	TAYLOR COUNTY, TEXAS

NOTICE OF APPEAL

COMES NOW, DONALD KIRKPATRICK, Respondent, Cross-Petitioner and files this his written notice of appeal to the judgment entered September 3, 1981.

Respectfully submitted,

ROBINSON, HANNA, MOORE & HOLLOWAY, INC.
P.O. Box 3819
Abilene, TX 79604
(915) 673-3792

BY: /s/ SAM MOORE
Bar No. 14376000

ATTORNEY FOR RESPONDENT
CROSS-PETITIONER

NO. 5038-C

IN THE INTEREST	*	IN THE 326TH DISTRICT
OF BABY GIRL	*	COURT OF
S , A CHILD	*	TAYLOR COUNTY, TEXAS

ORDER OVERRULING
REQUEST FOR ADDITIONAL
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Come on to be considered the Objections To and Request for Additional Findings of Fact and Conclusions of Law filed herein by Respondent/Cross-Petitioner, Donald J. Kirkpatrick, and after considering the same, the Court is of the opinion that the said Objections and Request should be denied and overruled.

IT IS THEREFORE ORDERED that the said Objections and Request are hereby overruled and denied.

Signed this 6th day of October,

1981.

/s/ B.J. EDWARDS, Judge
104th District Court,
Sitting for the
326th District Court

NO. 5038-C

IN THE INTEREST OF	X	IN THE 326TH
	X	DISTRICT COURT
	X	
BABY GIRL S ,	X	OF
	X	
A CHILD	X	TAYLOR COUNTY,
	X	TEXAS

STATEMENT OF FACTS

APPEARANCES:

For the Petitioner: (Christian Homes of Abilene)	Rhodes, Doscher & Heatherly 104 Citizens Natl. Bank Bldg. Abilene, Texas 79601 BY: Mr. Charles E. Myers
For the Cross-Petitioner (Donald J. Kirkpatrick)	Robinson, Hanna, Moore & Holloway, Inc. Post Office Box 3819 Abilene, Texas 79604 BY: Mr. Sam Moore
Attorney ad Litem: (R S)	Brown, Copeland & Ledbetter Post Office Box 3122 Abilene, Texas 79604 BY: Mr. Stan Brown
Attorney ad Litem: (Baby Girl S)	Schulz & Robertson Post Office Box 889 Abilene, Texas 79604 BY: Mr. Malcolm Schulz

BE IT REMEMBERED that on the 28th day of August, 1981, at 1:15 p.m., the above-styled and numbered cause came on for hearing before the Honorable Billy John Edwards, Presiding Judge of said Court in Abilene, Taylor County, Texas, whereupon the following proceedings were had:

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P R O C E E D I N G S
August 28, 1981
1:15 p.m.

THE COURT: I will call this case, Cause No. 5038-C, in the interest of Baby Girl S , a child, in the 326th District Court of Taylor County, Texas.

I would ask at this time, Mr. Myers, is Christian Homes ready?

MR. MYERS: Yes, your Honor, Christian Homes is ready.

THE COURT: All right, Is the respondent and cross-petitioner ready, Mr. Moore?

MR. MOORE: Yes, your Honor, we're ready.

THE COURT: Is the mother of the child ready, Mr. Brown?

MR. BROWN: Yes. We're ready, your Honor.

THE COURT: And is the ad litem for the child ready?

MR. SCHULZ: Yes, sir, we are.

THE COURT: All right. Thank you. Are all the witnesses here in the courtroom? Are these all witnesses?

MR. MYERS: Yes, they are, your Honor, as far as our side is concerned.

THE COURT: All right. Mr. Moore, have you [4] got some witnesses here?

MR. MOORE: Yes, sir.

THE COURT: Okay. Are there any others outside that anybody is aware of?

MR. SCHULZ: We have none, your Honor.

THE COURT: All right. If any of you are witnesses, would you stand up, please. If you are going to be a witness here today.

(Thereupon, the witnesses present in the courtroom were sworn.)

THE COURT: All right. Is the rule to be invoked?

MR. MYERS: We will invoke the rule,

your Honor.

THE COURT: All right. Let me also advise that this is to be -- I am going to order that this be a closed hearing. There is a request on file; there has been an order presented to me. If any of the parties have any objection, please lodge that to me. No objections?

MR. MYERS: Your Honor, I would like to ask that Ms. Nancy Miller, a representative of Christian Homes, be excluded from the rule, as well as R S , who is a party to this action, the mother of the child, be excused from the rule.

THE COURT: All right. Any objections to [5] that?

MR. MOORE: Judge -- We have no objection.

THE COURT: All right. Those of you who are going to be witnesses here today, the rule has been invoked, which simply

means this: that each of you intends to give testimony, or probably will be called as a witness in this case. The rule requires that you remain outside the courtroom until it is your turn to come in and give testimony. You may not discuss your testimony from this point, right now, until this hearing is concluded, with anyone, either before you testify or after you testify. You have just got to talk about other things while you are out in the hall. Now, one other thing though. There is an exception to that. If one of the attorneys, and there are four of them here, if any of them want to talk to you, they as an individual attorney can come and talk to you, but don't talk to that attorney in the presence of any other witness; you all find another room or another part of the courthouse to talk.

Now, the mother of the child, R

L S -- Where is R S ? Okay. You are welcome to stay in here if that is what you want to do. Your attorney is Mr. Brown. Why don't you just come over here and have a seat right next to Mr. Brown. The remainder of you go on outside, please.

MR. MYERS: Your Honor, with the exception of Ms. Miller, from Christian Homes, the executive director?

[6] THE COURT: Who is Ms. Miller? Okay. Who is this lady here?

UNIDENTIFIED WOMAN: Your Honor, I am just here --

THE COURT: Are you Diane Snyder: is that your name?

UNIDENTIFIED WOMAN: Yes.

THE COURT: Come here just a minute.

(Thereupon, a discussion was had at the bench, not reported.)

MR. SCHULZ: Your Honor, at this time I would like to call to the Court's atten-

tion, there is an inconsistency in the style of the pleadings and in the body of the pleadings in the First Amended Original Petition for Legitimation of a Child and in the style of some of the other pleadings, for instance, in the First Amended Original Petition to Terminate the Parent-Child Relationship, as to the spelling of the child's name.

THE COURT: S ?

MR. SCHULZ: Yes, sir.

THE COURT: Can we all stipulate how the last name is to be spelled?

MR. MYERS: It's S .

MR. SCHULZ: If you will notice, your Honor, throughout, there are variations of it.

[7] THE COURT: But the name is S ; is that correct?

MR. MYERS: That is correct, your Honor.

THE COURT: I am noting that change on my docket. Mr. Moore, you don't have any objection?

MR. MOORE: No, sir.

THE COURT: Mr. Myers, Mr. Brown, Mr. Schulz, do you have any objection?

MR. BROWN: No, your Honor.

MR. SCHULZ: No.

MR. MYERS: No, sir.

THE COURT: We know who we are talking about, but we will get the name spelled correctly. All right. We have a stipulation or two that the parties have agreed Mr. Moore, if you will recite what --

MR. MOORE: Your Honor, I think that Mr. Myers and Mr. Schulz and Mr. Brown and myself have all agreed to stipulate that my client, Donald Kirkpatrick, has paid support for the child in the amount of a hundred dollars a month since February of 1981 and that the total amount is seven

hundred dollars.

MR. MYERS: Seven hundred has been paid into the registry of the Court. As to whether or not it's support, I'm not sure that that was part of the stipulation. We will stipulate that it has been paid into the registry of the Court.

[8] MR. MOORE: And also, all parties agree and stipulate and it is admitted that Donald Kirkpatrick is the biological father of the child.

THE COURT: Is that the --

MR. MYERS: That is correct, your Honor.

THE COURT: -- stipulation, Mr. Myers? Mr. Schulz?

MR. SCHULZ: As I understand it, your Honor.

MR. BROWN: Yes. That is our stipulation.

THE COURT: All right. Is that all we

need to -- All right. Rather than summarizing any pleadings or anything or reading any at this time -- I have read the pleadings, and I am pretty familiar with the contentions of the parties, and we will go right into the evidence.

Mr. Myers, I believe you wanted to call a witness or two on the matter of the termination of the parental rights as to the mother.

MR. MYERS: We will call Jo Griffin.

THE COURT: Tell you what. We are going to go ahead and take a recess at this time so I can take care of a matter I had set at 1:30, and then we will start right back up.

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[9] THE COURT: Mr. Myers, you may proceed.

JO GRIFFIN,

having been duly sworn, testified on direct examination by Mr. Myers:

Q. Will you state your name, please?

A. Jo Griffin.

Q. Jo, how are you employed?

A. Adoption caseworker at Christian Homes of Abilene.

Q. Jo, would you briefly explain to the Court just what the function of Christian Homes is?

A. Chirstian Homes is a licensed child placing agency. We have three areas of service, primarily: maternity program, maternity home; we have a foster care program; and then we place children in adoptive homes.

Q. Jo, through your association with Christian Homes of Abilene, have you become acquainted with R L S ?

A. Yes, I have.

Q. And through your association with R L S , has she expressed a desire to you to place her child with [10] Christian Homes for adoption?

A. Yes.

Q. Do you know the date on which the baby child was born to R L S ? Was it in January of 1981?

A. Yes, sir. January 11.

Q. In regards to her desire to give her child up, did she, R L , execute an affidavit of relinquishment of parental rights?

A. Yes, sir.

Q. In this regard, in that affidavit, did she name Christian Homes of Abilene as the managing conservator of the child?

A. Yes, sir.

Q. Did she also state that she felt that it would be in the best interest of

her child to relinquish or to terminate her parental rights and to place the child for adoption?

A. Yes, sir.

Q. Likewise, did R execute an affidavit of status in this regard?

A. Yes, sir.

Q. And in the affidavit of status, did she state that she and the natural father of the child had never married nor had ever attempted to marry under the laws of any state or nation?

A. Yes.

[11] Q. Did she also state that the paternity as to the child had never been established?

A. Yes.

Q. And did she name the father of the child?

A. Yes.

Q. And who did she name as the

father of the child?

A. Donald Kirkpatrick.

Q. Jo, backing up to the affidavit of relinquishment of parental rights. The affidavit is an irrevocable affidavit. Did she understand the irrevocable nature of that affidavit when she executed it?

A. Yes, sir, I believe she did.

Q. Was it explained to her by you?

A. Yes.

Q. Jo, do you have any feelings as to whether or not it would be in the best interest of this child to terminate R L S 's parental rights to that child?

A. Yes. I believe it would be.

Q. And do you feel that it would be in the best interest of the child to name Christian Homes of Abilene as the managing conservator of that child?

A. Yes, sir.

Q. And are you asking the Court today to terminate R 's rights to that child and to so name Christian Homes of Abilene as the managing conservator?

[12] A. Yes, sir.

Q. Does Christian Homes of Abilene have a plan for the child, Jo?

A. Yes, we do.

Q. What is that plan?

A. To place it in an adoptive family.

Q. Has Christian Homes gone so far as to select prospective adoptive parents in the case?

A. Yes, we have.

MR. MYERS: I pass the witness, your Honor.

THE COURT: Mr. Moore, do you have any cross?

MR. MOORE: The only issue we are trying at this moment is to determine as

to the mother?

THE COURT: Yes.

MR. MOORE: I will reserve my questions.

THE COURT: Okay. Mr. Schulz.

CROSS EXAMINATION

BY MR. SCHULZ:

Q. This R L S that you speak of, do you see her here present in court?

A. Yes, sir.

[13] MR. SCHULZ: That is all.

THE COURT: Mr. Brown.

CROSS EXAMINATION

BY MR. BROWN:

Q. Jo, you stated that prior to R L S signing the mother's affidavit of relinquishment of parental

rights that you went over that instrument with her and explained it to her?

A. Yes, I did.

Q. Are you satisfied that she fully understood the nature of that instrument and the consequences of her signing it?

A. Yes, sir.

Q. Okay. Particularly, I will ask you again, did she fully understand the irrevocable nature of this instrument?

A. Yes, sir, I believe she did.

Q. All right. And you are satisfied that she signed it voluntarily and understanding the consequences of it?

A. Yes.

Q. And you do believe that the termination of R L S 's parental rights with regard to the child in question would be in the best interest of the child.

[14] A. Yes, sir.

Q. And you have also stated that naming Christian Homes of Abilene, Inc., as the managing conservator of the child would, in your opinion, be in the child's best interest?

A. Yes, sir.

MR. BROWN: That is all I have.

MR. MYERS: I have no further questions, your Honor.

THE COURT: Do you have anything else, Mr. Moore? Anybody?

MR. SCHULZ: No further questions, your Honor.

THE COURT: Ms. Griffin, at the time she executed that affidavit of relinquishment, was she represented by counsel or did she have an attorney or guardian ad litem present?

THE WITNESS: No, sir.

THE COURT: Okay. That is all I

have. Thank you.

MR. MYERS: Petitioner, Christian Homes, rests, your Honor.

THE COURT: All right. Mr. Moore, you may [15] proceed. I am going to reserve any ruling on the request to terminate the parental rights of the mother until I have heard all of the evidence.

You may step down.

MR. MYERS: Your Honor, may this witness be excused?

THE COURT: Probably not.

MR. MOORE: I may have -- I would like to reserve any cross-examination until a later time.

THE COURT: Yes. Let's keep her around a little while.

MR. MOORE: Your Honor, I would like to call R S to the stand as an

adverse witness.

R L S ,

having been duly sworn, testified on direct examination by Mr. Moore:

Q. Would you state your full name please, ma'am?

A. R L S .

Q. R , I have never met you before. My name is Sam Moore, and I represent Donald Kirkpatrick here today; you understand?

[16] A. Yes.

Q. May I call you R ?

A. Yes.

Q. How old are you?

A. Sixteen.

Q. And where do you live.

A. I live in York, Nebraska.

Q. How long have you lived in York, Nebraska?

A. For about the past four years.

Q. And you live there with your parents?

A. Yes, I do.

Q. What are their names?

A. T N S and D M S .

Q. Rachel, how old were you when this child was conceived?

A. Fifteen.

Q. Fifteen years old? When is your birthday?

A. October 1.

Q. Okay. Now, I think everybody agrees that Donald Kirkpatrick is the biological father.

A. Yes.

Q. Had you gone with Donald for some time before this child was conceived?

Q. Yes. Probably about -- It was almost a year and a half.

[17] Q. Before conception?

A. Yes.

Q. Okay. And did you and Donald see a lot of each other during that period of time?

A. Yes. About every weekend.

Q. Okay. Did your parents know about that relationship?

A. No.

Q. They didn't know about it at all?

A. No.

Q. When did they first learn of your relationship with Donald?

A. Well, my mother was the first to learn about it, which was about Christmas.

Q. The Christmas before?

A. Before I conceived.

Q. Okay. And how did she learn about it?

A. I told her. Because at Christmas I was all alone at my grandparents',

or at my grandmother's, and I was afraid that I had conceived then.

Q. By Donald?

A. Yes. By Donald.

Q. And you told your mother at that time that you had had a sexual relationship with Donald Kirkpatrick?

A. Yes.

[18] Q. And that you were afraid that you were pregnant at that time?

A. Yes.

THE COURT: What year are we talking about?

THE WITNESS: A. Okay. That would be 1980. Or it might have been 1979, at Christmas.

THE COURT: December 1979, January 1980?

THE WITNESS: A. Yes.

THE COURT: Okay.

MR. MOORE: Q. Do you know what

month the conception for this child would be?

THE WITNESS: A. Yes. In April.

Q. April?

A. Yes.

Q. Okay. So you thought you were pregnant before that time?

A. Yes.

Q. At Christmastime?

A. Right.

Q. Hadn't Donald been around your house before Christmas of 1979?

A. Well, just to drop me off. He had never been inside.

Q. How many times would you say he had dropped you off at your house before Christmas of '79?

[19] A. Well, quite a few times. I couldn't count them.

Q. He had been around you house quite a lot, had he not, during that year

and a half period?

A. Yes.

Q. Do you say that your parents didn't know about the relationship simply because you didn't tell them, or they just weren't aware or didn't care?

A. No. I think it was just that they weren't aware and that I didn't tell them.

Q. It wouldn't have been difficult for them to see Donald Kirkpatrick around your house during that period of time, would it?

A. No. And they did a couple of times, but --

Q. They never asked you what he was doing there?

A. Yes, they did, but at that time I -- He has a sister, and that was my girlfriend, and I would tell them that he came to pick me up. He was her brother,

and they believed that.

Q. Okay. So you misled your parents?

A. Right.

Q. Okay. But in December of '79 they did learn that you had had a relationship with him?

A. Just my mother.

Q. Did you tell her over what period of time it had gone on?

[20] A. No, I didn't.

Q. What did your mother tell you about that?

A. She told me that it would be wise to not see him any more.

Q. Did she you forbid you at that time to see Donald?

A. Yes, she did.

Q. What did she tell you, exactly?

A. She told, she said, "Promise me that you won't see him any more," and I

told her that I couldn't promise that, and I never did. And so I did continue to see him.

Q. Did your mother know that you continued to see him?

A. I don't think so.

Q. Did he come around your house from December until April?

A. Yes. Sometimes.

Q. He did come around?

A. Yes.

Q. And your parents did see you together during that period?

A. No.

Q. Never?

A. I don't -- They might have. They never told me about it, or they never asked me any questions about it.

Q. All right. So your mother told you she thought [21] it would be wise for you to not see Donald any more, but she

didn't impose any sanctions or anything of that nature; she didn't make any threats or anything if you did see him?

A. No, just that -- except that if I -- if I kept on continuing this, that she would have to talk to my dad about it and see what they should do.

Q. But you let her know that you intended to continue seeing -- or at least you wouldn't promise not to see him any more?

A. That's right.

Q. She knew that when you finished your conversation?

A. Yes.

Q. That you probably would see him again?

A. Yes.

Q. Okay. And she didn't do anything further at that point to prevent you from seeing him?

MR. MYERS: Your Honor, we are going to object to him constantly leading the witness.

MR. MOORE: This is an adverse witness, your Honor, and I think I've got the right to lead or put words in her mouth or do anything I want to.

THE COURT: Okay. Let's move along. I agree. You may lead her, within reasonable bounds. She is sixteen years old.

MR. SCHULZ: Your Honor, as to my party, [22] it's hearsay.

THE COURT: All right. I will sustain any hearsay as to you. Is that what you said?

MR. SCHULZ: Yes, sir.

THE COURT: Okay. Go ahead. Rephrase the question. Start over. I'm lost. Go ahead and ask the question again, then we will start from there.

MR. MOORE: Q. Really what I was trying to establish was that your parents, at least one of your parents, did know about the relationship for some time, knew it was going on, and allowed it to go on.

THE WITNESS: A. No, I wouldn't say that, because she didn't know about it, so she wasn't allowing it to go on.

Q. Well, at least when you had your meeting in December your mother knew that you were having a sexual relationship with Donald and she told you it would be unwise for you to see him any further, but she didn't impose any sanctions on you, and you let her know that you intended to continue to see him.

A. Well, I didn't let her know. I just told her that I would not promise her that. But I don't think she knew that I was continuing to see him. Had she known, she probably would have grounded me or

done something else.

Q. Okay. But you think it is possible either one or [23] both of your parents might have seen you with Donald during that period?

A. That could be, but I never heard about it.

Q. Okay. Now, R , at the time that you discovered that you were pregnant, is that when you decided that you wanted to have the baby and give it up for adoption, at that moment?

A. No.

Q. Was it after some discussion with your parents that you decided that it would be best for the child if you gave it up for adoption?

A. Well, it was after that, but mostly when I came to the conclusion myself. I concluded myself that that was probably what would be the best. I would

have never come to Christian Homes if I would have thought that I wasn't going to give it up at all.

Q. Okay. And you decided that would be best for you?

A. I figured that would be in the best interest for the child, myself, and Don.

Q. You figured it would be the best interest for Don?

A. Also.

Q. Okay. Now, R , after you discovered you were pregnant, did your parents forbid you to see Donald any more?

A. After I told them, you mean?

Q. Yes, ma'am.

[24] A. No. As a matter of fact, they -- They let me see him a couple of times after they knew that I was pregnant.

Q. Okay. And did you -- You and Don have had a number of conversations

about the child, about your relationship, and about what should be done, haven't you?

A. Yes.

Q. And you have also exchanged a good deal of correspondence back and forth?

A. Yes.

Q. When you were overseas, and then when you came to Abilene to Christian Homes, you wrote a number of letters, and he wrote letters to you?

A. Yes.

Q. Did you, R , try to get Don to relinquish any right or any claim that he might have to this child from the very start?

A. I don't understand your question.

Q. Okay. Let me put it another way. First let me ask you about your relationship with Don. What was the relationship?

Were you in love with Donald?

A. I thought I was. It was an infatuation.

Q. Do you believe that Donald was in love with you?

A. I did for a time.

Q. Okay. And during this year and a half before the child was conceived, did you believe that you loved Donald and [25] he loved you?

A. Yes.

Q. And for some time after the child was conceived, you believed that you loved Donald?

A. Yes.

Q. Up until the birth of the child, even?

A. Yes, I would say so.

Q. Okay. And you believed that he loved you?

A. Yes.

Q. And your love was expressed many

times in correspondence?

A. Yes.

Q. Okay. Now, let me ask you this: Did you try to convince Donald to relinquish any rights he would have to the child after the time you left York, Nebraska, and came to Christian Homes?

A. I still don't understand? What do you mean with relinquish his rights?

Q. Give up any rights that he might have as the biological father, sign papers to give up any rights that he might have--

A. Oh.

Q. -- as a biological father.

A. Oh. Yes.

Q. You did that?

[26] A. Yes.

Q. And did you put it in such a way that, "If you love me and you want what's good for me and you love the child, then you will sign these papers and give

up those rights"?

A. I think sometimes I did, yes, but not all the time.

Q. You were trying to use his love for you as a persuading point?

A. I don't think that was always true. Because a lot of times I spoke with him like on the phone and stuff, and I did tell him I felt he was being selfish, but I also told him that I felt he wasn't ready to be a father, either, even if he did get married.

Q. Now, R , I want to ask you some questions about your correspondence and what's in it, and I want you to know I have copies. I have the original and copies of all the correspondence.

A. I'm sure you do.

Q. And I don't want to go through each one of those with you, but there are certain things that I would like to ask

you about. It may be necessary for us to look at some of the letters. I want to ask you some questions. Specifically, you mentioned that -- you said it was being selfish of Donald to exercise any rights as a father.

A. That's right.

Q. Is that true?

[27] A. Yes.

Q. And did you tell him in your letters, "Donald, if you love me, you'll do what I want you to do," or words to that effect?

A. I don't rightly remember. I might have done that.

Q. It's possible you did that?

A. It could be.

Q. If it is shown in any of the correspondence that you wrote to Donald, you don't have any disagreement with that, do you?

A. Not if it's on black and white.

Q. Did you have that feeling at one time?

A. What feeling?

Q. "Donald, if you don't give this child up for adoption, you don't love me."

A. Yes.

Q. You wanted Donald to show his love for you by giving up any rights that he might have?

A. I wanted him to show his love for our child by giving up his rights.

Q. Let me ask you this, R : Do you believe that Donald had a very, very deep and intense love for you?

A. Not any more.

Q. At the time?

A. At the time I really was very mixed up. Sometimes [28] I wasn't sure that he did love me.

Q. Do you believe now that he didn't

love you because he has filed this petition to legitimate this child? Is that why you believe he doesn't love you?

A. That's part of it.

Q. Okay. Donald wanted this child from the very -- almost the very start, didn't he?

A. Yes.

Q. He expressed his desire to have the child because he loved you, and from the very start he told you he loved this child?

A. Yes.

Q. On many occasions?

A. Yes.

Q. And at one point, sometime near the time the child was born, Donald expressed some indecision about what he should do, didn't he?

A. I don't think so. The only time that I -- that I realized that he had

changed his mind -- Because all along in my pregnancy I thought he would go along with me. That is what he had written to me in his correspondence. And I did not know that he had changed his mind until Tuesday when Nancy brought me some mail, and one letter, which was -- looked kind of official, which was from a lawyer I guess that Don had gotten in York, and a letter written personally by Don saying that [29] he had changed his mind. That was on the same day.

Q. When did Donald ever tell you that he wanted to sign the papers and do what you wanted him to do?

A. He told me a lot of times in correspondence, and later he told me that he would not -- he would do whatever I thought was right and that my feelings counted and he didn't care what anyone else thought.

Q. Okay. When you discovered that Donald truly wanted the child, he wanted to legitimate the child, did that hurt you?

A. Yes, it did.

Q. And Donald knew that, didn't he? Donald knew that would hurt you?

A. That's right.

Q. Very badly?

A. Yes.

Q. Do you believe that Donald, during that period of time, wanted to do something to hurt you, R ?

A. No, I don't think he intentionally wanted to.

Q. Do you believe that he wants to hurt you now?

A. No, not personally me, but I think he realizes that he is hurting me very badly.

Q. R , during the time that you

have known Donald -- And you have known him very well, haven't you?

A. Yes.

Q. Has he always been honest and sincere in his [30] expressions to you?

A. Yes.

Q. Do you believe that he is honest and sincere in his love for this child and his desire to have this child and raise it and be morally, legally, and financially responsible for it?

A. I don't know, because he's never said that much about loving the child without connecting it to me.

Q. In his letters to you, didn't he express a love for you and the child?

A. Yes.

Q. And in your letters back, would you make a statement such as, "Donald, I know you love me, I know you love our child"?

A. Yes.

Q. Okay. And during that period of time when you were trying to get him to go along with you and what you wanted to do, you told him that you wanted to marry him in the future?

A. For a while, I think I did.

Q. Up until the time the child was born you were making such statements in your correspondence; is that true?

A. Yes, I believe so.

Q. Okay. And that even if Donald, if he would give up this child, that when you got to be eighteen you would get married and you would have other children, you wanted to have [31] other children with Donald, you wanted his children?

A. Yes. But this was still when I thought I loved him.

Q. But you know now that there is no future for you and Donald?

A. I know that for sure.

Q. Okay. And do you believe Donald realizes that?

A. Well, I certainly hope so.

Q. Okay. You have not had any contact with him whatsoever since about February or March of this year?

A. I'm not for sure. He gave me a call one time, and I'm not for sure when it was. I believe it was right before I left for Europe, I think. I'm not for sure. He called me up one time.

Q. Okay. But you also called him a couple of times after you got back to York, didn't you?

A. Yes, I did.

Q. Okay. But he has not tried to contact you since that time?

A. Not since that time, no.

Q. And you have not tried to contact him since that time?

A. No.

Q. And you both realize that the relationship is dead and gone?

[32] A. I can't speak for both of us. For me, yes.

Q. Okay. Now, R , I believe you have stated, or will state, that you believe that it is in the best interest of the child that Christian Homes take it and put it in a home somewhere.

A. That's right.

Q. Even though you don't know where the child will be placed?

A. Right.

Q. You don't know the people?

A. No.

Q. Do you believe that Donald Kirkpatrick would be a bad father?

A. Not a bad father, but just not too good parents.

Q. Too good? T-o-o or t-w-o?

THE COURT: Like one, two --

THE WITNESS: A. Yeah.

THE COURT: -- three, four, five? A number?

THE WITNESS: A. I mean he wouldn't be --

THE COURT: As good?

THE WITNESS: A. Good enough. I mean, it's not too good.

MR. MOORE: Q. The child would be better [33] with a mother and a father?

THE WITNESS: A. I believe so. But there is a little bit more attached to that.

Q. Well, let me ask you this: Is there any reason, other than the fact that Donald is a single parent, that you believe it would not be in the child's best interest for him to be a father?

A. Yes.

Q. Would you tell me what that is,

please?

A. First of all, because -- I haven't had contact with him lately, but the last time that I have talked to him, spoken to him, he was still living at home with his parents and two sisters. The home is run down. When I left it, they had a skunk living in it. The atmosphere, I feel, is something not good for a child. And his father drinks, he has a bad habit of smoking. If he got the child, he would have to work to help support it, which leaves the mother or the sister to take care of the child, to be the mother. The -- Well, I think that either he would still be living at home or in some way would be connected to his parents if he were to have the child to raise it, because I don't think he has ever been independent by himself, totally.

Q. R , are you saying that his

parents are bad people.

A. Maybe not his mother.

[34] Q. Are those the parents that you referred to in your letters as mom?

A. Yes.

Q. How did you refer to his father? Did you call him dad?

A. No, not usually. I have never felt very close to his father.

Q. These things that you say would be bad for the child, those were things that you knew about all during your relationship with Donald, weren't they?

A. That's right.

Q. And those were things that you knew about when you said that you wanted to marry him and live with him when you got to be eighteen?

A. That's right, but I wasn't about to live with his parents.

Q. Is there any reason that Donald

would have to live there in the house with his parents?

A. It might be for financial reasons. At the time, he was living there because someone else had moved into the house which is next to his grandmother's, and that was why he had moved back home. But he was not paying any kind of rent on that house. He might have been paying the bills; I don't know.

Q. Are there any other things that you believe that [35] you would like to tell the Court would not be in the best interest of the child if Donald were the father?

A. To me, personally, I think it's important that my child grows up knowing God, which she will not know living with the Kirkpatricks. Also --

Q. Is there any reason that Donald -- Do you believe that Donald believes

in God?

A. No.

Q. Not at all?

A. He believes there is something up there. I have talked with him about this. But he has never for sure said that that is God.

Q. R , you have said that their house is run down, that they have some bad habits like smoking, and his father drinks. Does Donald drink?

A. No, because he is an epileptic, and it's not good for him.

Q. Okay. His father drinks, Donald smokes, their house is run down and perhaps not as clean as it should be?

A. Not as clean? It's not clean at all.

Q. Okay. Their house is not clean. How do you know your child -- what environment your child is going to be in if

the Court terminates it?

A. Because I have been assured by Nancy and Jo and the people I have talked to at Christian Homes that have told [36] me that the parents that they choose --

Q. You have stipulated with them that the parents will not smoke and will not drink and will --

A. They are Christians, and I -- Knowing Christians, they usually do not smoke or drink or have any such problems as that. They might have health problems, but nothing like bad habits. They believe in the Bible.

Q. What other bad habits does Donald have?

A. Well, to me, he cusses a lot.

Q. All right. I want you to tell me, R , I want you to tell me every bad thing that you know about Donald. We already know he smokes, and he doesn't

believe in God, you don't think.

A. Okay. But just -- To me, that's a bad habit. To a lot of people it might not be.

Q. I am not arguing with you, R . I just want you to tell me every bad thing that you know about this boy. Is he a slackerd? Does he not work?

A. No, he works. But I feel like a lot of times he has been financially supported by his father. When I first got to know him, he didn't keep himself very clean, all over. He usually -- He usually got cleaned up for me. And --

Q. He got cleaned up when he saw you?

A. Yes. Or when we were going to go out or something.

Q. All right. How did you know he was dirty the other [37] times? Did you sneak around and see him?

A. No. I've seen him a lot of times

dirty after work, or I've gone with him out in the fields.

Q. Okay. What else? He uses bad words?

A. Yeah. And -- That's really just about it.

Q. Of course, those are all things -- You didn't discover those after you terminated your relationship with him; those are things you knew from the very start.

A. Sure. And I'm sure that I have some bad habits.

Q. Evidently his bad habits were not so bad that you terminated your relationship with him.

A. No, but a lot of his bad habits -- Usually he kept his language a lot to himself when I was around him.

Q. Did you ever use bad language, R ?

A. Yes, I did.

Q. And is that one of the reasons you don't think you should be the mother of the child?

A. No, but I'm not fighting to be the mother of the child.

Q. You don't want the child, you want to give it to Christian Homes and let them put it wherever they will, with whoever they will, but you just don't want him to have it?

A. That's not it. Because I have an assurance from Christian Homes that my baby is going to be placed in a good home. I'm adopted myself, and I rely on them, and I have faith [38] in them that they are not deceiving me by telling me that my child will have a good home with two Christian parents. And they have told me that those parents have to have been married for a certain period of time and have

a certain income, and these parents have been waiting a long time to have a child. And that means a lot to me, the fact that they would wait to have a child, because they maybe cannot have one themselves.

Q. They would wait a long time and they want very badly to have a child that is of no blood relation to them. Do you think that it would be extremely important to a father who has a blood relationship with a child to let that child go?

A. Yes. Just as important as it was to me.

Q. So you want Donald to do what you have done?

A. Yes, I do. That's for the best interest of our child.

Q. Are there any other reasons that you know about that the Court should not recognize him as the father, not legitimate this child, other than what you have

told me?

A. Just because of his living circumstances. And because he has never really shown to me that he really loves that child that much except in his letters. But the thing was, he had always connected it to me, and I feel like by getting the child maybe he thought he would get me.

Q. R , Donald knew that if he pursued this action for his child that it would sever his relationship with you,[39] didn't he?

A. I don't know.

Q. You made that clear to him, didn't you?

A. Yes, I did.

Q. So he knew that. Do you think that if he loved you and had no love for the child that he would pursue this action when he knew it was going to sever his relationship with you?

MR. MYERS: Your Honor, we are going to object to the leading at this point because I believe it is going a little bit too far.

THE COURT: Well, it's already -- Let's just go to the facts, and I will make those decisions.

MR. MOORE: Q. Would Donald have had a chance with you later when you got older, as far as a marital relationship were concerned, if he had gone along and done what you asked him to?

MR. MYERS: Again, you Honor, that is speculative and argumentative, and we object to it.

THE COURT: I think she has pretty well answered that. I think I know the answer too. Why don't we just leave it alone. Go to something else, Mr. Moore.

MR. MOORE: That is all the questions I have.

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[40] CROSS EXAMINATION

BY MR. MYERS:

Q. R , how did you first meet Donnie?

A. I met him through his sister, which -- When I moved to America, a girl from our church used to go out there to go horseback riding a lot, and his sister's name is Diane, and I learned to know Diane real well, and I used to go out there a lot. And this is how I met Don.

Q. Did you parents know that you were going out there to see Donnie, or did they think that you were going out there to visit with Diane.

A. They usually thought I was going out to visit Diane, yes.

Q. Did you go out there quite frequently? Or just explain to the Court --

A. Yes. Like I said before, about

every weekend.

Q. They have some horses out there that you like to ride?

A. Yes.

Q. You stated a moment ago that Donnie came to your house frequently. Did he come and have dinner, or just how was that?

A. No. He just would come maybe like to pick me up or to drop me off at home. He never came inside. He usually didn't even get out of his pickup.

[41] Q. Was Diane with you all most of the time when he would come by the house?

A. Well, in the beginning of our relationship, yes, she was with him most of the time.

Q. All right. R , when was the first time, to your knowledge, that your father was aware of anything going on between you and Donnie?

A. To my knowledge, I don't think he knew until I told him about the pregnancy.

Q. I see. When was the first time that Donnie asked you to marry him?

A. Well, it was before I left for Holland in 1980, and -- because then I was already pretty sure that I was pregnant. I hadn't done a test or anything, but -- that's when he asked me to marry him.

Q. He never mentioned marriage prior to any question of pregnancy, did he?

A. Well, we had talked about it, but he had never asked me.

Q. I see. But it never became a serious issue until you thought that you were pregnant?

A. That's right.

Q. After you found out that you were pregnant, R , did you discuss this matter in detail and in depth with your parents and with Donnie?

[42] A. Yes.

Q. When you discussed it with Donnie, did he ever indicate to you that if he could not have you he would love to take care of that child for the rest of that child's life?

A. No.

Q. Have you and Donnie ever discussed any type of moral responsibility which may be involved in an illegitimate pregnancy such as this?

A. What do you mean, moral?

A. [sic] Has Donnie ever said that just because you got pregnant you have a responsibility to get married and to raise that child?

A. I couldn't say directly Don. His father had talked to him about that, and Don did write me a letter that his father felt that since we were the ones that had gotten ourselves in this situa-

tion we should be responsible enough to get married and to take care of the child, that it was our duty, and I felt strongly that Don felt the same way, that he was backing that up. Otherwise I don't think he would have written me a letter about it.

Q. Well, do you feel that he wanted to marry you because he loved you or because he felt this responsibility?

A. Well, I think during the pregnancy it was probably both.

Q. But he never said, "If I can't have you, I want [43] the baby"?

A. No, not -- not during the pregnancy.

Q. Has he ever indicated to you that he has any love or feels any responsibility to the baby alone?

A. No. It has always been attached to me.

Q. Have you ever received any cor-

respondence or have you ever discussed this matter with Donnie's father?

A. Yes. I received two letters from Jim.

Q. What was his attitude toward this pregnancy?

A. He felt that part about the responsibility, and he felt that raising a child from like one to twelve was a snap, and that if I decided to get married that they would welcome me into their family without any questions asked, and also that -- He did state, though, in one of the letters, that it was up to me and Don, whatever we decided.

Q. Did Donnie, over the period of time that you all discussed what to do, did he indicate that whatever you decided would be all right with him?

A. Yes, he did.

Q. When was the very first time that

you realized that he was going to try to keep this baby in the manner that he is now seeking?

A. It was that Tuesday when -- You mean keep the baby, or -- You mean fight for it?

Q. To fight for it, yes, ma'am.

[44] A. Well, that wasn't until after I got home. I had seen him on a Monday, and sometime during that week I received a letter from Sam Moore stating in there that Don wished to file this suit, and then I realized that he was going to go ahead and fight for the baby. That was the first time.

Q. Well, let's back up just a moment. I believe you testified a minute ago that you got a letter while you were in the hospital.

A. Yes, I did.

Q. And that letter stated that he

was going to fight for the child; in effect, that is what it said?

A. Yes, it did.

Q. You indicated that it was a letter that looked like it was kind of official, from a lawyer. Is that the letter that we are talking about?

A. Yes.

Q. Okay. After you received that letter, did you telephone Donnie?

A. Yes, I did. I was very upset about it. And I called him and talked to him, and I tried to explain to him my feelings about why I gave up the baby and why I felt it would be foolish for him to fight for it, just for the financial reasons, as -- just the costs, you know, to take it to court, and also financially what it would cost for him to take care of the child, and that his mother would have to be talking care [45] of the child if he

did so get the child. And he -- I guess I convinced him. I don't know what -- But he said that, then, after our conversation, he told me to go ahead and call Nancy and tell her to go ahead and send the papers and that yes, he would sign then.

Q. So he agreed, even after he had sent the letter saying that he was going to fight for the child, after you talked to him, he then agreed that he would not fight for the child?

A. Yes. He was really kind of swinging back and forth. I don't think he really knew what he wanted.

Q. All right. Did he do this a lot? Did he swing from one way to the other?

A. Yes. Mainly after -- after the baby was born, or -- Well, I guess a little bit before, because I guess he had to send the letter, but it came as quite a shock to me that all at once he had decided dif-

ferently from what he had been writing to me all along.

THE COURT: Just a moment. Mr. Moore, did you need your partner in the courtroom for any reason?

MR. MOORE: He may have --

THE COURT: Why don't you talk to him.

Why don't we take a five-minute break at this time, okay?

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[46] THE COURT: Let's move along to get through today.

CROSS EXAMINATION (Cont'd)

BY MR. MYERS:

Q. R , at the time that you signed the relinquishment that you signed here in the hospital, the relinquishment of your parental rights --

A. Yes.

Q. -- what was your understanding as to Donnie's attitude as to whether or not

he would go along or not go along?

A. Well, it was right -- the day after I had called him, and -- that he had said, told me to call Nancy and have her send the papers, and my attitude then was that he would sign the papers and go along with giving up the child.

Q. So when you signed, you thought he was going to go along with you; is that right?

A. Yes, I did.

Q. All right. R , when you went back to York, Nebraska, right after the baby came, how many times have you seen or talked to Donnie since you have been home?

A. Well, I think I talked to him four times, and I [47] saw him once.

Q. All right. Let's go back to the first time that you saw him and spoke with him. Would you tell the Court -- Did you talk to him on the telephone, or did he

come to your house, or what happened?

A. Well, the first time I talked to him on the telephone, I asked him if he had signed the papers, and he said he hadn't because there was a paragraph in there, how it was stated, he didn't like that, how it was stated, and I told him that Nancy had said they had a certain kind of rules that they had to go by, or certain things that they could only put in there, and that that came closest to my situation.

Q. All right. At this time that you visited with him, did he show any concern or love for the child other than as related to you?

A. No.

Q. Did he tell you the one time that you saw him that he loved the child and wanted to take the child and live with the child until the child grew up?

A. No.

Q. All right. The second time that you talked to him in York, would you relate to the Court how that came about?

A. Do you mean on the phone, or --

Q. Yes, ma'am.

[48] A. That was when I had received the first papers from Sam Moore, and that was when I realized that he was going to take it to court and fight for the child, because the first time, when he said he wasn't going to sign the papers, I just thought that it would go through a legal process where if the father refused to sign the papers that Christian Homes somehow can get that righted and he doesn't have to sign them and they can go ahead and give the child up for adoption.

Q. All right. Was this the first time that you knew for sure he was going to fight for the child?

A. Yes.

Q. Did he tell you why?

A. Well, I don't remember now.

Q. Did he say anything to the effect that he would not let this go for longer than a certain period of time?

MR. MOORE: Object to him leading his witness, your Honor. This is his witness.

THE COURT: I am not sure that it is. I will overrule your objection.

MR. BROWN: It's my witness, your Honor.

THE COURT: I will overrule your objection. Go ahead.

MR. MYERS: Q. Did he say that he would [49] only try to fight for the child for a certain period of time?

THE WITNESS: A. Yes, he did. He told me that he wouldn't let it go on any longer than six months.

Q. Did he tell you why he was putting

some kind of time limitation on it?

A. No, he didn't.

Q. R , the third time that you talked to him, what was the nature of that conversation?

A. Well, I had told him -- I had gotten mad at him for not telling me that he had decided to fight for the child, and I -- after I had got Sam's papers, I called him and I told him that I thought he was a coward for not telling me that he was planning to do this. He had never given me anything to think that he would do such a thing. And I called him about the papers, and I had told him, during that conversation, that if I was to be expecting any more papers I would like to know ahead of time, and so he had returned a call to me telling me that I was to receive some papers from Sam Moore, and he did not say -- I asked him what they were about, and he

didn't know.

Q. All right. Well, on this third occasion that you had to talk with Donnie, did he express any love or concern for the child?

A. No.

Q. Now, would you tell the Court about the fourth time [50] that you talked to Donnie. Is the fourth time the very last time you have?

A. Yes, it is.

Q. All right. Would you tell the Court about the very last time, the fourth time, that you talked with Donnie.

A. The last time I talked with him, he called me, also. And it was on a Saturday, because my parents were gone to see my grandparents, and -- Well, it must have been when R was still in school, because she was in Lubbock. That's my sister. And he called me, and at first I didn't

recognize who it was, and he said it was Don, and I asked him his reason for calling, and he stated that he just wanted to see how I was doing because he cared about me, and I told him that I was doing okay except that I was worried about the child, and I told him also, then, for sure, that our relationship was over with and that I didn't want to have anything more to do with him. And I asked him if he knew any more about the child, or if I was to be getting any more papers, and he said no, and that the reason that it was kind of at a standstill at that time was because -- something about ninety days, something was going to take ninety days, and I don't know what he was talking about.

Q. R , in the four times that you talked to Donnie since the baby has been born, he has never expressed any concern as to the welfare of the child, has he?

A. No, he hasn't.

[51] Q. He has never expressed any independent love for the child, either, has he?

A. No.

Q. Let me digress just a moment, R . At the time that you and Donnie first started dating, how old was Donnie?

A. Let me think. I think he was twenty-two.

Q. And how old were you?

A. It was at the end of my eighth grade year, and I think I was fourteen.

Q. I see. Did you feel like you were -- Looking back on it, R , do you feel that during this period of your life you were pretty mixed up, didn't really know what you were doing as far as your involvement with Donnie and your attitudes that you had?

A. No, I don't think I was mixed up, but I -- At that time, I didn't really know

what I wanted out of life, except that I received sort of security from Don, and at that time my mother had started working, something that she had never done before, and I think I kind of took shelter --

Q. Do you feel --

A. -- in this relationship.

Q. Yes. Do you feel that, over the last year, I guess it's been, that your has been a little more organized, a little more straightened out since you have come to grips with some things?

[52] A. Yes, definitely.

Q. And you feel that it would be in the best interest of the child that that child be placed for adoption, do you not?

A. Yes, I do.

Q. Now, it was mentioned just a moment ago that you yourself were adopted.

A. Yes, I am.

Q. Do you harbor, or do you feel any

resentment toward your natural parents because of the adoption?

A. No, I don't. And especially being put in the same situation, I feel like my mother probably didn't have any other choice than to do what she did. It was in Korea, and Korea is not known for being a very civilized type of country, and she was probably pretty much in poverty. But that's just my own theories about it.

Q. Donnie has expressed some concern to you about this, hasn't he?

A. Yes. One time we did get into an argument about that, and he figured that I must hate my parents, my real parents, my biological parents, because they had given me up for adoption, and that why wouldn't I want to go and seem them now and see why they had done this, and I assured him that I was perfectly happy with the parents that I have now, I've grown up with them, and

I'm happy with them. And he thought that if I gave the child up for adoption and if he [53] agreed that the child that I have given away would grow up hating us, me and Don, then, because the child would think that we didn't love her. But I've never had such feelings, and I'm adopted, and I have never had the feeling of having to look up my parents to see why they adopted me out, because I'm perfectly happy the way I am.

Q. And there is not any doubt in your mind that an adoption in this case would be much better for the child than to allow the child to go back --

A. There is not doubt.

Q. R , I will show you what has been marked as Petitioner's Exhibit One and ask if you can identify that as a picture that you took inside of Donnie's house.

A. Yes, it is.

Q. And is it a fair and accurate representation of the conditions in his house at the time that you were dating him?

A. Yes.

MR. MYERS: Your Honor, we would offer Petitioner's Exhibit Number One into Evidence.

MR. MOORE: I don't have any objection to this.

THE COURT: Show it to the other attorneys, please.

[54] MR. MYERS: (Indicating)

MR. SCHULZ: I have no objection, your Honor.

MR. BROWN: I have no objection.

THE COURT: Petitioner's One will be admitted.

(Thereupon, the instrument previously marked for identification as Petitioner's Exhibit Number One was received into evidence, and is attached

hereto.)

MR. MYERS: Q. Just one question in relation to that picture, R . Is that the way the house normally looked while you were dating him, and does it still look like that as far as you know?

THE WITNESS: A. As far as I know, yes.

Q. Okay. R , I just want to ask you a couple more questions. I want to ask you to tell the Court, as thoroughly as you can, why you think it would be in the best interest of your child to allow that child to be placed for adoption through Christian Homes of Abilene.

A. Well, it's because I -- Once a-gain, I've been assured by Nancy and the people that I was working with at the time that I spent in Christian Homes that my child would be placed in a home with two Christian parents who had to be married for

a certain amount of time and had to be making a certain amount of income and that have been waiting for a [55] child for a long time, and because I feel that, at sixteen, I am not capable of raising a child by myself. I feel I am too young. It's probably something that I could do, but it could lead just to -- It would be a child without a father, and my parents would probably have to help me out with it and help me raise the child, especially financially they would have to help me. And because marriage was not the answer. I wasn't ready to get married, and I didn't want to get married then. And because I'm adopted myself, and I feel very strongly that my child can be just as happy as I am right now in a home with two different parents who aren't her biological parents. And I have seen many, many other people with adopted children who are perfectly happy,

and the children are perfectly happy, even with brothers and sisters that do come from the natural family; they just fit right in. I have brothers and sisters that belong to my father and mother that I have right now. And I'm perfectly happy the way I am, and I feel that my child would be very happy and very blessed in a family with two parents that know Christ. And I think, just feel like Christian Homes is a good place to put my child and that they will care for that child in good foster care until the child -- they will be sure that the child gets a good set of parents, with a good home. I have total confidence in this.

MR. MYERS: Pass the witness, your Honor.

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[56] CROSS EXAMINATION

BY MR. SCHULZ:

Q. R , let me make sure, now. You are sixteen now?

A. Yes, I am.

Q. And your birthdate is in --

A. October 1.

Q. October. So you were -- Donald is twenty-five now?

A. Yes.

Q. Were you fourteen when you began this relationship with Donald?

A. Yes.

Q. Or thirteen?

A. I believe so. My calculations -- No, I guess I -- I am trying to think back. No, I would have been fourteen.

Q. He is eight or nine years older than you are?

A. Eight.

Q. Do you both live in or near York, Nebraska?

A. Yes. I live in town, and he lives

about two or three miles out of town, out in the country.

Q. About how populated is this area you are talking about?

A. Population is about eight thousand.

Q. Do you think it would be emotionally traumatic to a child to be raised in a community and know that a person there [57] was its mother and not live in that family-type environment? Would that be good for the child?

A. I don't think so, no.

Q. R , do you understand about love?

A. I don't know. Such a big thing.

Q. It's got a lot of parts to it, doesn't it?

A. That's right.

Q. And part of it is selfishness, isn't it?

A. Yes.

Q. And part of it is sacrificial.

A. Yes.

Q. And do you love your child any less because you have given it up for adoption?

A. No, I don't. I probably love it more.

MR. SCHULZ: That's all.

CROSS EXAMINATION

BY MR. BROWN:

Q. R , you heard the testimony earlier from Jo Griffin, a caseworker.

A. Yes.

Q. You heard her testify that before you signed the [58] mother's affidavit of relinquishment of parental rights that she fully explained that to you.

A. Yes, she did.

Q. Do you feel that she did fully

explain that affidavit of relinquishment of your parental rights to you?

A. Yes.

Q. Did you understand that by signing that you were naming Christian Homes of Abilene as the managing conservator of your child?

A. Yes, I do.

Q. Do you understand what a managing conservator is? Can you just tell the Court in your own words what that means to you?

A. Well, to me it's that they would have possession of the child.

Q. All right.

A. And that they, you know, take care of it.

Q. All right. And did she also explain to you to your satisfaction that this instrument, this affidavit of relinquishment of parental rights, was irrevocable?

A. Excuse me?

Q. In other words, that once you signed it that you were stating that you could not change your mind.

A. Yes.

Q. About placing -- about relinquishing or giving up [59] your parental rights.

A. Yes.

Q. In other words, it was irrevocable.

A. Yes.

Q. And do you feel that you fully understood all that?

A. Yes, I do.

Q. Was there any pressure put on you to sign it?

A. No, there wasn't.

Q. Do you feel that you voluntarily and understandingly and knowingly signed this affidavit of relinquishment of parental rights?

A. Yes, I do.

Q. All right. Now, in spite of all that -- Let's assume something for a moment. If in this case the Court were to determine that your parental rights were not going to be relinquished, were not going to be terminated, and understanding what you have already said about there simply not being any more chance of marriage, that that's just out the window --

A. Yes.

Q. If you were left in a situation, then, where you and Donald are still the unmarried parents of the child, with neither of your parental rights terminated, but you know you are not going to live together, you are not going to be married, what would you feel would be best for the child in that situation?

[60] A. Now, this is if I can't give it up for adoption?

Q. Yes.

Q. Yes.

A. Well, then, I would feel it was best to take the child myself and do the best I could to raise it.

Q. All right. Are you saying that in that situation you feel that it would be better for the child to be with you, to live with you, rather than with Donald?

A. Yes, I feel that way.

Q. All right. Would you say that your objections to him legitimating the child and being named managing conservator of the child, do they have more to do with him, with his capabilities personally, or with the fact that he would be a single father?

A. I think with his capabilities personally. Kind of both.

Q. All right. But is it still your position, then, that you want your parental rights in the child to be terminated?

A. Yes. If there is need, yes.

Q. And that you want the child to be placed with Christian Homes, for Christian Homes to be named managing conservator and to place the child with a suitable couple for adoption?

A. Yes.

Q. And that is what you think would be, and you believe [61] will be in the child's best interest?

A. Yes.

A. All right.

MR. BROWN: Pass the witness.

REDIRECT EXAMINATION

BY MR. MOORE:

Q. R , have you just testified that if the Court doesn't terminate either one of your rights that the child would be better off with you than with Donald?

A. Yes, I think so.

Q. You don't even want the child.

A. I never said that. I want the child, but I think she's better off at Christian Homes. I love the child and I would take her in if I had to. But not because I don't love her; I just feel that that's my mother duty.

Q. You just want the child to be with anybody but Donald?

A. No. I want her to be with somebody better than with Donald, and that's what Christian Homes has to offer.

Q. Petitioner's Exhibit Number One that you have offered [62] into evidence there, what does that demonstrate? Does that show -- Are you trying to show Donald there, his physical appearance? Are you trying to show the house's appearance?

A. Probably both.

Q. Both?

A. Yes.

Q. What had Donald been doing immediately before that picture was taken?

A. I don't remember. He'd probably been working.

Q. Had he just come in from work?

A. I don't remember.

Q. Are those his work boots and work clothes that he has got on in this picture?

A. Yes.

Q. Is that normally the way he worked?

A. Yes.

Q. So chances are he just came in from a hard day's work?

A. Yes.

Q. Does this picture show the house to be filthy? Do you consider that filthy?

A. Yes, I do.

Q. Now, you and Donald, before you even knew you were pregnant, had discussed marriage?

A. Yes.

[63] Q. After you found out you were pregnant, he asked you to marry him?

A. Yes.

Q. The papers that the Christian Homes sent him had in there that he had abandoned you?

A. Yes.

Q. And he refused to even consider that, didn't he?

A. Yes.

Q. As a matter of fact, he offered to pay the bill down here at Christian Homes, didn't he, to your parents?

A. I don't know if he ever did that or not. You'd have to ask my father that.

Q. All right. You don't know whether he did or not, whether he offered to pay all or part of your bill down here?

A. I'm not sure.

Q. He sent you money while you were

staying at Christian Homes?

A. Yes, he did.

Q. R , when did you decide that he's the kind of person he is, that you have testified he is today? Was it after you knew for sure that he wanted the child?

A. He's always been the person he's always been.

Q. In your letters, R , you refer to him as being a most wonderful man, handsome, a good man, a hard worker.

A. He still is. He has good qualities, too.

[64] Q. Before, you were just willing to overlook his bad qualities, when you had your relationship with him?

A. I wouldn't say that, because a lot of times I would talk to him about his smoking and his language.

Q. Okay. When you had the phone conversation with him that you have testi-

fied about, is that when you told him, "If you love me, you'll do what I want you to do"?

A. Which one do you mean?

Q. The last phone conversation that you testified to Mr. Myers about. When he was vacillating and you called him on the phone, when you said that he had written a letter, or his attorney had written a letter.

A. Oh. In the hospital, you mean?

Q. Yes, ma'am.

A. I might have said that, yes.

Q. "Donald, if you love me, you'll go along and do what I want you to do"?

A. Yes, but -- I think you're twisting around how I meant that.

Q. Has your family discussed moving from York, moving from Nebraska?

A. Have we discussed that?

Q. Yes, ma'am.

A. Well, yes, when we were still undecided exactly about what to do.

[65] Q. Talked about moving to Arizona, or where?

A. Yes, that would be one of the places.

Q. It's a good bet that you and your family won't even be in that part of the country?

A. That's right. We can move anywhere.

Q. Okay. And you have discussed it, and there is a good probability that you will move?

A. We're not thinking about it any move, no.

MR. MOORE: I believe that's all.

RECROSS EXAMINATION

BY MR. MYERS:

Q. R ., how much did Donnie send

you when you were down here in Abilene in the home? Do you recall how much money he sent you?

A. Yes. He probably, all together, sent me -- He probably sent me about seventy dollars.

Q. Did his dad send you any money?

A. Yes, he did. He sent me forty dollars one time.

Q. R , really what you are saying is, all you want is what's in the best interest of the child, is that right?

[66] A. Right.

Q. And if you are not able to give the child up for adoption, you think the best thing for the child would be for you to raise it?

A. That's right.

MR. MYERS: Pass the witness.

THE COURT: Anybody have anything fur-

ther?

You may step down.

MR. MOORE: I will call Donald Kirkpatrick to the stand.

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[67] DONALD J. KIRKPATRICK,

having been duly sworn, testified on direct examination by Mr. Moore:

Q. State your full name, please.

A. Donald J. Kirkpatrick.

Q. Donald, speak up, now, so the judge can hear what you have got to say and the court reporter can take this down, all right? Where do you live?

A. In York, Nebraska.

Q. How old a man are you?

A. Twenty-five.

Q. And have you lived there all your life?

A. Yes.

Q. You live with your family up there?

A. Yes. Right now I do.

Q. All right. Your family consists of your mother and father, and there are seven children in your family; is that right?

A. Right.

Q. Seven children all raised right there in the home where your mother and father live?

A. Yes.

Q. All but you and two sisters have gone?

A. Yes.

Q. Are grown and gone; is that right?

[68] A. Yes.

Q. All right. What do you do up there for a living?

A. Farm with my dad.

Q. You and your dad farm about a section of Nebraska land up there?

A. Yes, farm ground.

Q. All right. Do you make a good living at it?

A. Yes.

Q. You and your father both?

A. Yes.

Q. All right. Are you all kind of partners in your --

A. Yes.

Q. -- this farming operation?

A. Yes.

Q. What are your plans for the future, Donald? Do you plan to be a farmer all your life?

A. Yes. Maybe a rancher; hope the day comes. Want some ranchland.

Q. All right. And your father kind of plans for you to take over the operation there, doesn't he?

A. My brother and I, yes. My oldest brother and I.

Q. Now, you have a house of your own

down the road from your parents house; is that right?

A. It is not my own. It is my aunt's house that lives out in Colorado.

[69] Q. All right. But you have lived down there for a time?

A. Yes.

Q. You are living, presently, with your mother and father.

A. Yes.

Q. Working there on the place. Is there any reason why you would have to stay there with your parents?

A. No.

Q. You could move down in that house, in your aunt's house, or anywhere else, for that matter?

A. Yes, if I wanted to.

Q. All right. Now, Donald, you have heard the testimony about the relationship that you had with R ..

A. Yes.

Q. You loved her very much; is that right?

A. Yes.

Q. Still do?

A. Yes, I do.

Q. Did you realize when you filed this petition to legitimate this child that it would destroy any relationship that you had at all with R .?

MR. MYERS: Objection, your Honor. He is leading his witness.

THE COURT: I will let him answer. Go ahead.

[70] MR. MOORE: Q. Explain to the judge the consequences to your relationship with R when you filed this petition to legitimate.

THE WITNESS: A. If I come to court to get custody, try and go to court and get custody of my daughter, that it would

all be over between R and I and there would be no chance of her and I ever getting married.

Q. And you knew that?

A. Yes.

Q. And that's exactly what happened, isn't it.

A. Yes.

Q. Have you had any contact with her since that last phone conversation in March, February or March?

A. No.

Q. Have you attempted to contact her, Donald?

A. No.

Q. Do you ever intend to try and contact her in any way, either by mail or phone or in person?

A. No.

Q. You realize that she has made up her mind that the relationship is over,

that it is dead?

A. Yes.

Q. Is there anything connected with an attempt to get R to marry you in getting this child?

A. No.

[71] Q. You knew that that would drive her off?

A. Yes.

Q. All right. If you had given up your rights to the child and refused to file a petition to legitimate, did you think at that time that you would have had a chance with R in the future?

A. Small chance, maybe.

Q. Okay. Do you love this child?

A. Yes.

Q. Do you feel a bond with it?

A. Yes.

Q. Now, how old are you?

A. Twenty-five.

Q. Do you understand that raising a child is a very serious responsibility?

A. Yes.

Q. Do you believe that you could fulfill your obligations to the child both morally and financially?

A. Yes.

Q. Now, you have got to work during the day?

A. Yes.

Q. How will you make arrangements to take care of the child when you have to be in the fields?

A. Probably -- Either my mom will probably look after my daughter, or my sister.

[72] Q. All right. Have you discussed this with both your mother and father and your sister?

A. Yes.

Q. Will you take care of the child at

night?

A. Yes.

Q. You understand that taking care of a child is a lot of work?

A. Yes, I do.

Q. Have you thought this thing out fully before you filed this petition?

A. Yes, I did.

Q. Are you financially able to care for a child and raise a child?

A. Yes. I feel I am.

Q. All right. Can you tell the Court how much money you paid income tax on, not in '80, but in '79?

A. I grossed out sixteen thousand dollars, and then I paid, laid out, had to pay -- it was either around twelve or thirteen hundred dollars to the government.

Q. All right. And you made more money in 1980?

A. Made a little bit less.

Q. All right. Now, Donald, did you want this child -- From the time you found out that she was pregnant, did you want this child?

A. Yes, I did.

[73] Q. When you found out, what did you tell R ?

A. I asked her if she wanted to get married. I wanted her to assure herself, because if she didn't want to, I didn't want her to.

Q. What did you tell her about the child?

A. I told her I loved the child and wanted -- want my daughter, too, but yet -- All I can say is I love my daughter and I want her, and she's blood, and I just can't see letting her go when I want to raise her myself.

Q. From the time that child was conceived, did R try to encourage you to give up any right or claim that you might have to the child?

A. Yes. You could say that.

Q. What would she tell you in that regard?

A. She said -- said if I didn't, she

would -- if I try and get custody of the child, it would be all over with between her and I.

Q. Did she ever tell you that if you loved her, if you loved R , that you would give up this child and do what she wanted to do?

A. Yes.

Q. You heard her testify about the phone conversation when she got the papers --

A. Yes.

Q. -- from the lawyer, the phone conversation with her, [74] with you?

A. Yes.

Q. Is that what she told you in that conversation?

A. Yes. What she said is true, what I said. And I also told her to tear up the papers, and -- But I called back Nancy myself, though, and asked her to send up the

papers.

Q. Is that because R had pleaded with you to do that?

A. Yes.

Q. Did you ever want to do anything to hurt R ?

A. No.

Q. And you knew when you tried to get this child that it was going to hurt her?

A. Yes, I did.

Q. Why would you do that, Donald? Why would you try to get the child when you knew it was going to hurt R and it was going to destroy any relationship that you could ever have with her?

A. Because I love my daughter, too. I couldn't let her go, too. I had to try and get her. She's my blood, and I just couldn't let her go. I want her. She's part of me, and I just got to have her.

Q. If the judge were to legitimate

the child and name you the managing conservator, would you ever go around F . or try to contact her, her or her family?

[75] A. No.

Q. Would you ever tell the child what its mother's name was?

A. Yes.

Q. The home where you live with your parents, if you continue to live there, is it filthy? Is it not fit to live in?

A. No.

Q. Your parents have raised seven children there?

A. I know. Excuse me. I'm sorry. Would you please restate it? I misunderstood.

Q. All right. Just listen to the question, Donald. Take you time.

A. Would you please repeat the question again?

Q. Is you home there, your parents' home, or the house that you have got down

the road that you have lived in some that you could go back and live in now, is it suitable for raising a child?

A. Yes.

Q. Whether you lived in your parents' home there or you lived at -- How far down the road is this home, this other house?

A. From my parents' house, it's a half mile -- Well, it's three-quarters of a mile east from where my parents live.

Q. All right. If you lived with your parents, or you [76] lived in the house half a mile down the road, is there any reason that you wouldn't have proper supervision for this child when you were working during the day, either by carrying the child to your mother's house or having your mother come to this house, or your sister?

A. Well, there's no reason why they wouldn't. She always would have proper care. My grandma down where the house is,

she lives right across the driveway from me. She's right down there, too. So I got -- I'd have someone to take care of her. If something happened up home there, my grandma's there, would be right there, and they'd all be able to take care of her.

Q. Does your grandmother live on a farm there?

A. Yes.

Q. Your father someday will inherit a part of that land, will he not?

A. Part of that, yes.

Q. In addition to the land he already owns?

A. Yes.

Q. And some day you will inherit a part of all of that; is that right?

A. Yes.

Q. And your child would be entitled to her rights as one of your children to part of that land?

A. Yes. I'd want her to have it.

[77] Q. You understand that if the Court legitimates this child that you have all of the duties and responsibilities that any parent owes a child under the law?

A. Yes, I do.

Q. And that is what you want?

A. Yes.

MR. MOORE: I will pass the witness.

CROSS EXAMINATION

BY MR. MYERS:

Q. Donnie, are you telling the Court this afternoon that if the Court decides to grant your petition, in other words allow the child to go back with you, that the child would be raised by not only you but by your parents and your sister and your grandmother and everybody else; is that correct?

A. No, I ain't saying that.

Q. Well, they would certainly share in the responsibilities, would they not?

A. I said if something happened, as far as my grandma, she'd be there to help.

Q. But your sister would have primary responsibility during the day, wouldn't she?

[78] A. Not always, because I've talked it over with my sister, and I said, "I don't want you to stay here just because

of my daughter." If she wants to move out, wants to go out in the evening on her own, I told her to go ahead and do that; I don't want her to stay there because of my daughter.

Q. So are you telling the Court, then, that whoever is around would be the one to take care of the child?

A. No.

Q. Well, do you have a definite plan as to how you would handle this situation?

A. Definite plan right now is for mom to look out for my daughter, and right now my sister's home, and she will help.

Q. Your mom and dad, then, would have the primary responsibility?

A. My dad works, and he farms out there, too, with me.

Q. How old are your mother and dad?

A. Mom's forty-nine, and my dad's fifty-four.

Q. Donnie, have you ever had any experience, yourself, in raising a child?

A. No.

Q. You have had none whatsoever; is that correct?

A. No.

Q. You don't even know what is involved in raising [79] a child from eight months, do you?

A. I can't -- I can't say no to that, because my brother's got an infant, too. He's just -- He's eight or nine months old, and I've taken care of him.

Q. But you have never had the responsibility of taking care of a child on a twenty-four hour basis, have you?

A. No, I have not.

Q. Donnie, after the time that the child was born, after the time that P went back to Nebraska -- It has been eight months since that child was born?

A. Yes.

Q. You have never made any attempt whatsoever to find out about the welfare of that child, have you?

A. Yes, I have, because I've called down and asked Mr. Moore.

Q. You asked Mr. Moore?

A. Yes.

Q. What did he know?

A. He told me everything was okay.

Q. Well, now, were you asking him about the condition of your child or your case?

A. The condition of my child.

Q. Well, has he seen the child since the child was born?

A. No, I have not.

[80] Q. No; has Mr. Moore seen the child?

A. I do not know that for sure. I cannot answer that question.

Q. Well, he never did tell you your child was all right, did he?

A. No.

Q. Well, did you ever try to contact your child through Christian Homes just to see if she was all right?

A. No, I did not.

Q. Not one time, did you? Now, you made some payments. Mr. Moore said something about you sending some payments down.

A. Right.

Q. Do you recall when you made those payments, or when you started making the payments?

A. Started February 14 or 20, somewhere around there, and after that it was around the first of the month.

Q. Okay. Now, these payments, you didn't start these payments until over a month after your child was born; is that correct?

A. That's correct.

Q. And isn't it true that Mr. Moore advised you to do that?

A. Yes.

Q. Okay. So that was his decision, to make those payments?

[81] A. Yes.

Q. And you just wanted to make those payments so it would make your case look a little bit better?

A. No, I did not.

Q. Did you really want that payment to be made for support?

A. Yes.

Q. Have you made any effort to see that that money was used for the child?

A. Sent it down to the court. On every one of the money orders, postal money orders, sent down here is "child support for Baby Girl S ."

Q. Okay. In your decision to pursue this matter in the manner that you are

pursuing it, Donnie, you have discussed this matter at great length with your parents, have you not?

A. Yes I have.

Q. And you have had long conversations with your father, I'm sure?

A. Yes.

Q. And he is pretty opinionated as to just what should be the proper thing to do in a situation like this, isn't he?

A. In my opinion, he is.

Q. He has some pretty strong feelings about people that get pregnant and they are not married, doesn't he?

[82] A. No, he does not have -- Excuse me; would you please restate that?

Q. Does your -- You have discussed this matter at length with you father, have you not, Donnie?

A. Concerning --

Q. Yes. About R and the action

that you are taking in this court.

A. Yes.

Q. And he has been a pretty strong influence in your decision to pursue this matter, hasn't he?

A. No.

Q. He has not tried to influence you at all? Is that your testimony?

A. No.

Q. Does he not have any concern about the responsibility of people that get pregnant, and doesn't he think that marriage is the best thing whether the child's best interests are concerned or not?

A. I cannot answer that question for my dad. He --

Q. But you have never discussed that with him; is that your testimony?

A. He feels that people ought to get married, you know, have a family, yes,

he does. He feels very strongly that way.

MR. MYERS: Pass the witness.

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[83] CROSS EXAMINATION

BY MR. SCHULZ:

Q. How far did you go in school, Don?

A. I graduated from high school and started in farming.

Q. Have you lived there in York all that time?

A. Yes.

Q. How did this affair or romance get started between you and R ?

A. Through my sister, I met R .

Q. Had you dated other girls?

A. Before her?

Q. Yes, sir.

A. I had met one other young lady that I had dated.

Q. Well, I believe R has said that she was in the eight [sic] grade, fourteen

years of age. Did you consider her kind of young?

A. Thought about it, yes.

Q. You have asked about the duties and responsibilities of a parent. Now, how about Baby Girl S when she's fourteen?

A. Excuse me, sir. Would you please repeat it?

Q. How about Baby Girl S when she's fourteen? What would your attitude be if someone seduced her?

MR. MOORE: Malcolm, I don't believe anybody has testified that this young lady was seduced. I think [84] it was a mutual situation.

MR. SCHULZ: All right. I will withdraw that question. I have no further questions.

CROSS EXAMINATION

BY MR. BROWN:

Q. Donald, you heard me ask this similar question to R awhile ago, and I will ask you, also. Assume just assume, that after we are through here in court and everything is decided that nobody's parental rights are terminated and that the child is not with Christian Homes any longer.

A. Yes.

Q. And that you and R are unmarried with no plans of marrying each other, really no possibility of marrying each other, and there is this baby daughter that, in that situation, under the law, would need to be staying on a permanent basis with one or the other of you. In that situation, what do you think would be in the child's best interest as to which one of you the child should be with?

A. Are you saying -- Which one isn't going to be right, isn't going to be how it should be put, because it [85] wouldn't be right; just by saying her or I won't give me the right answer.

Q. I am not trying to ask you any kind of trick question. Just --

A. Excuse me. I didn't

Q. Just what, in your opinion, would be best for the child? If you have a situation where the child has got to live with either you or R and you all are not going to be married or living together, would it be better in that situation for the child to live with P or would it be better for the child to live with you, in your opinion?

A. The way I feel about my child, myself, yes.

Q. All right. And, again, I am not asking what would be better -- And I want

make this clear; I am not asking what you think would be better for you --

A. I understand that.

Q. -- but what would be best for the child.

A. I understand that.

Q. And you understand that's really what is behind all of this?

A. Yes, I know. I understand that.

Q. Okay. And are you stating, then, that you believe that in that situation the child would be better off with you than with Rachel? Is that your testimony?

A. Yes. I love my daughter.

[86] MR. BROWN: I don't have any further questions.

REDIRECT EXAMINATION

BY MR. MOORE:

Q. Donald, did you offer to R .'s parents to pay the full cost of the home

here?

A. Yes, I did.

Q. Did they refuse you that?

A. Yes, they did.

Q. When they refused you that, did you offer to pay a part of the cost, half of the cost, or any part they would let you pay?

A. Yes, sir. Because they said that the people who adopted the child paid for R 's -- for the cost, R 's medical bills, they had to pay the room and board, and I said, "Can I pay part of that?" and they said no.

Q. Now, you sent her money while she was down here?

A. Yes.

Q. You offered to pay that. Are you willing now to pay the doctor and hospital bills, whatever they may be --

A. Yes.

[87] Q. -- so that you may have your child? Are you willing to pay any costs whatsoever that the Court deems that you should have to pay if he legitimates this child?

A. All the doctor bills and all that, yes.

Q. Okay. Now, did someone come to you, some welfare agency, come to your father's home?

A. No, they did not come to my father's home, they come down to the house where I was living, down there where my grandma lives.

Q. Who was that?

A. I cannot tell you the lady's name. She was from Seward. And we talked for about two hours, down to the house where I told her I'd been staying, where I used to live.

Q. Did she examine where you were

staying there, where you were living?

A. All we done was come in the house, talked; told her why I wasn't living down here.

Q. Well, she was in your home, though?

A. In the house where I was staying, but not up at my folk's home. It was down there in that little house where I was living, and we just went in on the couch and sat down and talked for about two hours.

Q. And was this lady from some social agency up there in that state?

A. Yes. She was from Seward. I cannot remember her [88] name. I've got the card in my thing there, but I'd have to find it. But I cannot remember her name, what it was.

Q. Donald, do you believe that it would be in the best interest of your child

that, if we legitimate it, since you are the biological father, for you to raise the child than it be placed in a home with someone you don't know?

A. Yes. I feel -- with me.

Q. Would you have any objections, if the Court saw fit, if the child were legitimated, to name some agency in the state of Nebraska to monitor your situation, to come into your home, to check on you, if you have the child, any time, any place?

A. No, I do not. They're plumb welcome, any time.

Q. Would you have any objection to the Court or anyone else doing any kind of investigation on you, on your family, or your situation there in Nebraska?

A. I can't speak for my family, but as far as myself, they're plumb welcome to. I can just speak for myself. As far as my dad is concerned, it wouldn't make no dif-

ference to him, either, but any of the rest of the members of my family I can't speak for.

Q. Do you have any motivation for this action, Donald, other than a desire and love for this child and to raise it?

A. No other motivations.

MR. MOORE: I believe that is all.

---

[89] MR. MYERS: I have no further questions.

RECROSS EXAMINATION

BY MR. SCHULZ:

Q. Donald, when did you get here to Abilene?

A. Got here yesterday at about 4:30, I suppose; somewhere around in there.

Q. Did you have a good night's sleep last night?

A. I don't know. I suppose so.

MR. SCHULZ: That's all

MR. MOORE: Step down.

THE COURT: Mr. Brown, do you have any more questions?

MR. BROWN: No.

THE COURT: You have got how many brothers and sisters, now?

THE WITNESS: A. I got three brothers -- three older brothers and three sisters, besides me.

THE COURT: Start with your oldest and give [90] me that one's name.

THE WITNESS: A. Mervyn Kirkpatrick.

THE COURT: Who?

THE WITNESS: A. Mervyn.

THE COURT: What does Mervyn do?

THE WITNESS: A. Drives an eighteen-wheeler over the road.

THE COURT: Where does he live?

THE WITNESS: A. He lives -- He keeps his business -- Well, he lives on the road, because he's always on the road, because he works for Salt Lake City out in Utah.

THE COURT: Does he have a home place now, or a house? Is he married or anything?

THE WITNESS: A. No, he is not married.

THE COURT: How old is he?

THE WITNESS: A. He is going to be thirty.

THE COURT: Going to be thirty?

THE WITNESS: A. Yes.

THE COURT: Okay. Who is next in line of the kids? Are you next in the age group?

THE WITNESS: A. No. Gary is.

THE COURT: What does Gary do?

THE WITNESS: A. He's in the Army.

THE COURT: Where is he stationed?

[91] THE WITNESS: A. In Germany.

THE COURT: How long has he been in the Army?

THE WITNESS: A. I can't say for sure, but two years after he got out of high school --

THE COURT: Is he a career man, going to be a career man?

THE WITNESS: A. I think he's planning on that.

THE COURT: What is his rank?

THE WITNESS: A. He's either E-5 or E-6; somewhere around in there.

THE COURT: Who is next in line?

THE WITNESS: A. Susan, my sister.

THE COURT: What does Susan do? Is she married? Where does she live?

THE WITNESS: A. Out in -- Out in Colorado.

THE COURT: Okay. And what -- does she work, or is she a housewife?

THE WITNESS: A. She works.

THE COURT: Who is next in line?

THE WITNESS: A. Myself.

THE COURT: All right. What does Susan do?

THE WITNESS: A. She works -- Well, she's married. She works -- He builds houses, and she works part-time, and here this December she's expecting.

[92] THE COURT: What kind of work does she do?

THE WITNESS: A. She works in a -- secretarial work.

THE COURT: Secretary?

THE WITNESS: A. Some kind of work like that.

THE COURT: After you, who is next in line?

THE WITNESS: A. Myself.

THE COURT: After you, then who?

THE WITNESS: A. Rex.

THE COURT: Rex?

THE WITNESS: A. Yes.

THE COURT: Okay. How old is Rex?

THE WITNESS: A. He's -- Twenty-three or -- I think he's twenty-three. I can't say for sure.

THE COURT: What does Rex do?

THE WITNESS: A. He's married, and he's got -- He works for Beaver Construction out of Geneva, Nebraska.

THE COURT: Is that near York?

THE WITNESS: A. Yes.

THE COURT: Who is next?

THE WITNESS: A. My sister, Diane.

THE COURT: And Diane is the one that is kind of at home most of the time now?

[93] THE WITNESS: A. Yes.

THE COURT: All right. How old is Diane?

THE WITNESS: A. She's twenty-one, I think. I can't say for sure.

THE COURT: Diane is not married?

THE WITNESS: A. No.

THE COURT: Okay. No young children in the house, then other than -- you and Diane are the only people?

THE WITNESS: A. Then I got another sister after her.

THE COURT: Okay. Who is next?

THE WITNESS: A. Lisa. And she is -- She's going to be in the eighth grade. Now, I can't -- She's either thirteen or fourteen years old.

THE COURT: Thirteen or fourteen?

THE WITNESS: A. Yes.

THE COURT: Okay. Does she date?

THE WITNESS: A. No. Not to my knowledge. I cannot say that for sure, but to my knowledge, I don't think she does, but --

THE COURT: Is she the one that's a friend of R 's.

THE WITNESS: A. That was Diane that was her friend, close friend.

THE COURT: Okay. That's all I have. I [94] just wanted to get a background on that. That is all I have.

MR. MOORE: Step down, Donald.

Judge, I would like to -- Has the Court examined the social study in the case? I would ask the Court to take that into consideration. I would like to offer it into evidence at this time to be made a part of the permanent record.

MR. MYERS: Your Honor, I would like to just say two things about the social study. Number one, I would like the Court to consider, if the Court does consider the social study, that the study was conducted solely from the standpoint of one interview with Mr. Kirkpatrick and it was not a study of, really, the overall condition of his life since it is limited only to him.

No other members of the family were consulted, no friends, relatives, or neighbors.

THE COURT: I think the report states that.

MR. MYERS: Also, I would like to point the Court's attention to the verification on the report. If the Court will notice, the portion of the social study which was done in Nebraska was conducted by a lady by the name of Rehor, but the report was sworn to and it was sworn to be true and correct and all facts true and correct by a Miss Fitzgerald here in Abilene, and I fail to see how Miss Fitzgerald could swear to something that was done in Nebraska.

THE COURT: Who requested that social study be done?

[95] MR. MOORE: Mr. Myers. He's the one that demanded and got the social study.

THE COURT: Okay. As I understand it, Elaine Fitzgerald's signature applies to the whole report including the investigation of your client; is that your understanding?

MR. MYERS: Well --

THE COURT: You don't understand her to just be certifying to the report out there, do you?

MR. MYERS: Well, if you will notice at the end of the report as to Christian Homes, she has sworn to that separately.

THE COURT: Yes.

MR. MYERS: And it looks to me that she is again just swearing to --

THE COURT: Okay. Well, I will take that into consideration. Mr. Schulz, do you have any objection to it being admiteed into evidence?

MR. SCHULZ: No, your Honor.

THE COURT: Mr. Brown, do you?

MR. BROWN: I don't, either.

THE COURT: Do you want to mark it as an exhibit?

MR. MOORE: Yes, sir. Your Honor, if the Court has some feeling that this is not adequate, I would request [96] time for me to get it --

THE COURT: I am satisfied with the social study. I don't think anything else is going to, you know, bring out any more than we can bring out on the stand.

MR. SCHULZ: Your Honor, I have some hesitancy about it being introduced into evidence. Now I have never -- I have never had that happen.

THE COURT: I think it is admissible.

MR. SCHULZ: I think the Court can consider it, but I think it takes it out of the secrecy realm once you make it a part of the evidence.

THE COURT: Mr. Brown, what do you

think about it?

MR. BROWN: Well, Judge, I am of the opinion that, in a proceeding of this nature, I think that anything -- that any additional information we can get to the Court and get in the record is advisable, and I am accordingly not objecting to it, and I would hope that the Court would admit it, would make it part of the record and consider it along with everything else here.

THE COURT: Mr. Myers, do you think there is any problem? There is not any problem on a hearsay basis or anything? Is that what you are speaking to, Mr. Schulz?

MR. SCHULZ: No.

THE COURT: You are just talking about the [97] advisability --

MR. SCHULZ: I think the statute says that the Court shall order a social study

in an adoption case, and I think the statute says the Court can consider it. I just have some hesitation about it being evidence as opposed to under the statutory authority of the Court to consider it.

MR. BROWN: Well, it's not an adoption case.

THE COURT: I think that -- I am going to allow it into evidence with the understanding -- Of course, I understand your objection; that goes to the weight of it, I think. And I am going to allow it into evidence. You know, for whatever purpose, if maybe nothing more than appeal purposes, if that is what becomes of this. Okay? It is admitted. Well, you had better get it marked, as --

MR. MOORE: Cross-Petitioner's Number One.

(Thereupon, the instrument was marked for identification as Cross-Petition-

er's Exhibit No. 1 and received into evidence.)

THE COURT: It is admitted.

MR. BROWN: Your Honor, let me ask one thing. Is the entire social study being admitted, including the study as to Christian Homes?

THE COURT: Yes.

MR. BROWN: We actually have two social studies there.

[98] THE COURT: Well, there is just one, but they were put together and stapled together.

MR. BROWN: We have two separate reports that are together as one social study, then; is that it?

THE COURT: Both reports are being admitted.

MR. BROWN: All right.

THE COURT: I will make this stipulation though: that I don't think that any

witness ought to be questioned about things in this directly from it, or it ought not to be revealed to anybody.

MR. SCHULZ: This was my hesitancy with it being part of the evidence, your Honor, in that, depending on how this court rules, that social study will be in other people's hands, and also, on appeal, will be reproduced and made part of the transcript here in the district clerk's office.

MR. MOORE: Evidence is sealed in cases every day and sent up to the appeals court. That can be sealed if the Court likes.

THE COURT: What I am going to do is order that all this be sealed.

MR. SCHULZ: That's my only hesitation.

THE COURT: Including the statement of facts. Whatever happens in these pro-

ceedings, they are going to be sealed, including this exhibit here. I am going to [99] admit it into evidence, but I am also going to rule that it -- no party can question other witnesses by showing them the document and say, you know, "What do you think about this," or anything like that, because it is supposed to be for the Court and not for the witnesses. Okay?

Let me see everybody up here at the bench for a minute.

(Thereupon, a discussion was had at the bench, not reported.)

THE COURT: We will be in recess for a few minutes, here.

THE COURT: All right. Call your next witness, please.

MR. MOORE: Mrs. Kirkpatrick.

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[100] HAZEL KIRKPATRICK,

having beein duly sworn, testified on direct examination by Mr. Moore:

Q. Would you state your full name for the records, please, ma'am?

A. Hazel Eveyln Kirkpatrick.

Q. Mrs. Kirkpatrick, would you speak up loudly enough, now, so the lady that is taking this down and all the lawyers here in the courtroom can hear what you have to say?

A. Yes, sir.

Q. And the judge.

A. Yes, sir.

Q. Hold old a lady are you, Mrs. Kirkpatrick?

A. I'm forty-nine.

Q. Where do you live?

A. I live at Route One, York, Nebraska.

Q. Have you lived there all your life, ma'am?

A. All my married life. I've lived in Nebraska all my life.

Q. What is your husband's name?

A. James Kirkpatrick, and he's a farmer.

Q. All right. How long have you and Mr. Kirkpatrick lived there where you are now?

A. Be thirty-one years in March.

[101] Q. How long have you been married?

A. Be thirty-one years in October.

Q. All right. And do you have children?

A. We have seven living children.

Q. All right. And were all of those children raised right there in that home?

A. Yes. And we're raising our youngest now.

Q. All right. Now, Donald Kirkpatrick here is one of those children; is that right?

A. That's right.

Q. He is still living in the home at this time?

A. Yes, he does.

Q. Now, Mrs. Kirkpatrick, you understand the nature of these proceedings?

A. Yes, I do.

Q. Prior to the discovery that R was pregnant, did R spend a good deal of time out there on your place?

A. Yes. She'd come and visit with my -- She was a friend of my daughters and with my son.

Q. Did she come out there often?

A. Yes, quite often.

Q. Mrs. Kirkpatrick, I want to ask you: What is the condition of your home? Is it a new home?

A. No.

Q. Old home?

[102] A. My home was built in -- my house

that I live in was built in 1905. It needs some repair work done, but my husband's a farmer, and we -- the way things are, today the way things are, you have to put your money back into your crops and into your equipment and things. We are working on the house, but it's slow work.

Q. Was that land passed on to your husband from his family?

A. No. My husband bought that line in 1950, about three or four months before we were married.

Q. Okay. Now, Mrs. Kirkpatrick, is your home dirty?

A. Well, maybe to some people it would be, but it's clean health-wise.

Q. All right. Other than the fact that it's old and you might like to live in a newer home, is it a suitable place -- You have raised seven kids there; it must be a suitable place to raise a family.

A. I feel it is. I have my other grandchild there quite often.

Q. What about Donald and his personal habits? Other than when he has been out working in the fields all day, does he keep himself clean and --

A. Yes.

Q. -- take care of himself?

A. Yes.

[103] Q. Do you know how to take care of an eight-month-old baby?

A. Yes.

Q. Would you be glad to impart any information or knowledge that you have in that regard to Donald?

A. Yes, I would.

Q. And help him in any way that he needs --

A. Yes.

Q. -- to raise this child?

A. Yes, I would.

Q. Before your first child was born, Mrs. Kirkpatrick, did you have any knowledge about how to raise a kid?

A. No.

Q. Do you think that is something that Donald could pick up on?

A. Yes, I think he could. And then he's been around with his nephew, and -- our other son's child, and he helped with that one quite often, and he's very good with him.

Q. Okay. Before R came to Abilene, and she was visiting in your home, did she ever show any dissatisfaction with your home or the way it appeared or being in your home? Did she appear to be uncomfortable there?

A. Not to my knowledge, she didn't

Q. What did she call you?

A. She called me Mom.

[104] Q. Did you love R ?

A. Yes, I did. We all did.

Q. Do you know that the relationship between R and Donald is forever gone?

A. Yes, I understand that.

Q. Do you believe that Donald has asked for this child in some kind of hope of a marital relationship between him and R ?

A. No, I don't believe so. It's not that way.

Q. Have you and your husband tried to influence Donald one way or the other in this matter?

A. No. We did not and we cannot. He has a mind of his own, and he knows what he wants in life. We -- With all of our children, we have been that way.

Q. Did Donald have some difficulty in making this decision?

A. Very much so.

Q. Do you know why, Mrs. Kirkpatrick?

A. It's a -- It would be a very tough decision to make, because it's his daughter. And it would be a very hard decision for anybody to make. For us, it's our grandchild, and we like to take care of our own. That't the way we always have been in our family.

Q. Does your family feel a very strong bond and obligation to the children?

[105] A. Yes. To all of them. That's the way my husband's family -- we are. We don't -- Sure, we get upset with them. That's normal with any parent. I think anybody here would have to admit that. There are days when you get upset with your children and you have problems, but there's always a way of settling it and finally getting it straightened out.

Q. Mrs. Kirkpatrick, do you believe that Donald is mature and responsible enough to care for a child and raise a child?

A. With help from his -- from myself and my daughter, Diane, yes, I think he could do it. There would be no problems concerning the child's care. We would see to it the child was taken care of, and it would have the religious upbringing, too.

Q. Do you feel that it would be in the best interest of this child --

A. Well, in my --

Q. -- that --

A. Go ahead.

Q. -- that Donald be named the legitimate father and that he be named the managing conservator to raise the child?

A. You mean in my opinion?

Q. Yes, ma'am.

[106] A. Yes. I think he is able to -- he is well capable of taking on that responsibility. He has taken on the responsibility of things at home. Ever since his father lost his hand and part of his arm, he has taken over a lot of the responsibility.

Q. Who does most of the work there on the farm?

A. Donald does. My husband helps him.

Q. Mrs. Kirkpatrick, do you think that a child would be better off in a family, being raised by people who are of its own blood, or by strangers?

A. I think a child is better off being raised by people of its own blood. That's the way I was brought up to be-

lieve.

Q. Does Donald have any medical problem?

A. Yes, he does. He has a form of epilepsy called grand mal. And the last couple of years there has been none; he has had no seizures. They have controlled it with medication. And the doctors said in time that probably he should be able to get clear off of the medication they have him on now.

MR. MOORE: I believe that is all the questions I have.

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[107] CROSS EXAMINATION

BY MR. MYERS:

Q. Mrs. Kirkpatrick, you said that you and your husband have raised seven children; is that correct?

A. We have seven living children, yes.

Q. And you and your husband were there all the time that they were growing up; they had a mother and a father all the time?

A. Right.

Q. And you believe, don't you, that that is a pretty good situation to be in?

A. Yes.

Q. To have a mother and a father?

A. Right.

Q. Wouldn't you say that that is the best situation to have, if a young child, an eight-month-old child, has a mother

and a father to care for him? Isn't that the way you would want your children to be raised?

A. Well, yes, but if it's not possible, we do what we can do. Now, I don't like to abandon our own. You know what I mean. I don't know if you understand what I mean. I consider the child my granddaughter, and she is.

Q. Have you ever seen your granddaughter?

A. No, but I still have feelings for that little baby.

Q. Have you ever tried to see her?

[108] A. No. We were told we couldn't, so --

Q. Have you ever made any inquiries as to your, quote, granddaughter's condition?

A. Yes, we have, but I haven't ever

-- we have never received no --

Q. Who have you inquired with?

A. Well, through my son, and I presume my husband through the attorney. He does all that.

Q. Well, you know, don't you, Mrs. Kirkpatrick, that the child is in the custody of Christian Homes of Abilene, do you not?

A. Yes, I know that.

Q. Why did you not try to contact Christian Homes of Abilene if you were concerned about the welfare of the child?

A. We went through our attorney.

Q. Did you request him to go through Christian Homes?

A. Well, I presume my husband did. I didn't do it, talk with the attorney.

Q. Mrs. Kirkpatrick, you testified a moment ago about your son's epileptic

condition.

A. Yes.

Q. Is he on any type of medication today that you know of?

A. Yes.

[109] Q. What type of medication is he on this afternoon?

A. Well, he takes two types of medication every day.

Q. He takes medication daily?

A. Yes.

Q. Mr. Schulz inquired a moment ago about him appearing tired. He appeared tired to me, also. Does he normally appear this way, Mrs. Kirkpatrick?

A. No. We have drove quite a long ways here in the last few days. And, you know, not sleeping in your own bed at night, you don't rest as well as you do in your own bed, and I think you will have

to agree with me there.

Q. Do you and Mr. Kirkpatrick attend church, Mrs. Kirkpatrick?

A. Yes. We belong to the Presbyterian Church there in York.

Q. And do you regularly attend that church?

A. Well, I work every other Sunday. Every other weekend I work in a rest home.

Q. Do you attend the church on the Sundays you are not working?

A. Not every Sunday, but when I have time -- I have other things at home, like where I work during the week; I kind of get caught up then.

Q. What about your husband? Is he a regular churchgoer?

[110] A. No, not really. I think I attend more than he does. But we do -- our children have always went to church when

they were younger, and then we let them decide what their religion -- what they want to do. We never told them. We wasn't brought up that way.

Q. Did most of your children decide, after you let them decide, to attend church?

A. Yes.

Q. Most of them did?

A. Our boys didn't attend church so much, but the girls did.

Q. Does Donnie not attend church?

A. Well, he goes for weddings and funerals. That way he attends church.

Q. But he doesn't go each Sunday?

A. No, not every Sunday.

Q. During the week?

A. No.

Q. You have seven children, Mrs. Kirkpatrick. Have any of them gone through

a divorce?

A. Yes. Two of them have.

Q. And are any of them presently in the process of divorce?

A. I don't know about the one boy. I couldn't tell you for sure, because he is in Germany in the Armed Forces. [111] And his wife and son are in Kansas. That's all I know, where they are at the moment.

Q. I see.

MR. MYERS: I pass the witness.

MR. SCHULZ: I have no questions.

MR. BROWN: No questions.

MR. MOORE: Step down, Mrs.

Kirkpatrick. Call Mr. Kirkpatrick.

THE COURT: May I ask her a question? Does your husband drink very much?

THE WITNESS: A. No more than most men would.

THE COURT: What does he drink? A beer or two in the afternoon, or three or four, or what?

THE WITNESS: A. Maybe three or four.

THE COURT: Mostly beer?

THE WITNESS: A. Yes.

THE COURT: Does he ever get drunk, real drunk, and raise Cain or anything?

THE WITNESS: A. Well, I don't -- How do you mean, sir?

THE COURT: Well, you would know better [112] than me. I'm not there, you know.

THE WITNESS: A. No, not really. There are times I get -- well, I get upset with him. But that's a wife's prerogative, isn't it?

THE COURT: When he drinks too much, you let him know, is what you are telling me?

THE WITNESS: A. Yes, I do.

THE COURT: All right. Where do you work and what are your hours?

THE WITNESS: A. Well, right now I'm working part-time, and I work seven -- quarter of seven to 3:15, and I work at our rest home at York, and I am certified to pass medicine and things like that, and that's my work.

THE COURT: Okay. Thank you.

MR. MOORE: Call Mr. Kirkpatrick.

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[113] JAMES KIRKPATRICK,

having been duly sworn, testified on direct examination by Mr. Moore:

Q. Would you state your full name for the judge and for the record, please, sir?

A. James M. Kirkpatrick.

Q. All right. Mr. Kirkpatrick, I will ask you to speak up, now, so everybody here can hear what you have to say, sir. How old a man are you?

A. Fifty-four.

Q. And have you lived in Nebraska all your life, Mr. Kirkpatrick?

A. York County, Nebraska.

Q. What have you done all your life?

A. Livestock and farming.

Q. Was your father before you a farmer?

A. Yes.

Q. Now, Mr. Kirkpatrick, is Donald here your son?

A. Right.

Q. You and your wife have seven children; is that right?

A. Yes.

Q. The lady that just testified here.

A. I beg your pardon?

Q. The lady that just preceded you on the stand there, [114] that's your wife; is that right?

A. Right.

Q. All right. Now, what does Donald do in Nebraska?

A. Oh, it's mainly livestock and farming.

Q. Are he and you partners --

A. Uh-huh.

Q. -- in working your place up there?

A. Right.

Q. All right. You own some land?

A. Yes.

Q. And then you lease some land from other people?

A. That's correct.

Q. And raise corn and livestock. All right. Who does most of the work up there, Mr. Kirkpatrick?

A. That's very obvious. He does.

Q. All right. How did you lose your hand?

A. Field cutter.

Q. On the farm?

A. (Indicating)

THE COURT: You need to answer up when -- You need to speak verbally. Answer yes or no when he asks a question, because she is taking it down, and she can't put down a nod of the head, okay?

Q. Mr. Kirkpatrick, you know that your son has filed a petition in this court requesting that the Court legitimate [115] the child that was conceived between he and R S ; you know that?

A. I know that.

Q. Sir, have you done anything to influence Donald's decision about what he should do in this matter?

A. I don't think I influenced his decision. I told him I would back him up financially.

Q. With whatever he decided?

A. (Indicating)

THE COURT: Was that yes or no?

Q. Speak up. Mr. Kirkpatrick, you have to speak out audibly.

A. Yes.

Q. She can't take the nod of your

head, this lady over here can't.

A. I'm sorry, your Honor.

THE COURT: That's fine. I understand. Go ahead.

Q. Now, Mr. Kirkpatrick, do you believe that Donald is mature and responsible enough to care for and raise a child?

A. I'm positive.

Q. Is he able, financially, to provide for all the child's needs?

A. Yes.

Q. All right. Do you and he split your earning there [116] on the farm?

A. Yes.

A. Okay. Mr. Kirkpatrick, do you believe it would be in the best interest of this child if Donald were named the managing conservator and had custody of the child and were allowed to raise it,

rather than terminating everybody's rights and placing the child in a home to be raised by some strangers?

A. Well, I feel that anybody ought to be entitled to their own flesh and blood.

Q. Do you feel a very strong obligation to your children, Mr. Kirkpatrick, to your children that you have raised?

A. I've backed them up up to date. I feel very strongly that way.

Q. All right. Mr. Kirkpatrick, somebody has mentioned during the hearing that you maybe throw down a beer or two.

A. That is correct, too.

Q. Do you have a drinking problem, sir?

A. I don't think so.

Q. Do you get drunk every day?

A. Can't afford it.

Q. Does it interfere with your work?

Do you work every day?

A. What I am able, yes. I work every day.

[117] Q. And when you say when you are able, are you referring to your arm?

A. Yes.

Q. Will you help Donald in any way that is necessary to raise this child?

A. Yes.

Q. Both information and teaching him how to raise children, help him financially, do whatever is necessary?

A. Yes.

MR. MOORE: I will pass the witness.

CROSS EXAMINATION

BY MR. MEYERS:

Q. Mr. Kirkpatrick, you feel pretty strongly, do you not, that whenever two people become pregnant, or the woman becomes pregnant, that they should be married; is that correct?

A. Yes, I do.

Q. And if they are not married, they should take whatever steps are necessary to become married?

A. I felt that way, yes.

Q. Do you feel that way now?

[118] A. I guess I would have to answer that if both parties were not willing, that was up to them.

Q. Okay. Do you feel that they should be married, that the best thing that could happen would be for them to marry and take care of that child, wheth-

er or not that would really be in the best interst of that child?

A. Would you rephrase that question?

Q. Do you feel that two people should become married and keep that child whether or not it would actually be in the best interest of that child to do so?

A. That's a very hard question to answer. I don't know the answer to that one.

Q. Well, you are asking, or at least your son is asking the court today to allow him to take the child with him because that would be in its best interest, even though R and he are not going to get married. So if you could, would you just tell the Court why you think that would be in the best interest of this eight-month-old child.

A. Well, in my viewpoint, one party did not seem to want the child, and he does.

Q. Go ahead.

A. That's how I feel.

Q. That's the only reason; is that correct?

A. Right.

Q. What if you knew that the other person loved the [119] child as much if nor more than Donald does, if he does? Would that influence your answer?

A. Well, I am just a layman, but I would think there, if you was considering giving away a child, that possibly you weren't showing the child's best interests.

Q. Could you elaborate on that a little bit?

A. I don't know how I could.

Q. Well, do you agree that sometimes you have to love someone an awful lot to let that person go?

A. No, I would not.

Q. You have never held back on your kids because you loved them? You have always kept them right there under your wing?

A. No. I helped them the best I could to get started on their own. That's been my main purpose in life.

MR. MEYERS: I pass the witness.

MR. SCHULZ: No questions.

MR. BROWN: I have no questions.

MR. MOORE: Would you like to ask him some questions, Judge?

THE COURT: No, I don't have any questions.

MR. MOORE: Step down, Mr. Kirkpatrick.

[120] THE COURT: Thank you.

MR. MOORE: Judge, I rest.

MR. MYERS: I will call Mrs. S .

D S ,

having been duly sworn, testified on direct examination by Mr. Myers:

Q. Will you state your name, please?

A. What did you say?

Q. Will you state your name, please?

A. D M S .

Q. Mrs. S , you are the mother of R S ; is that correct?

A. Yes.

Q. And you have come here from Nebraska to testify in this proceeding?

A. Yes.

Q. And you understand the nature of this proceeding; is that right?

A. Yes.

Q. Let me direct your attention back to October of 1980. Or, let's go back a little further than that, Mrs. [121] S . Let's go back to the time before you found out that R was pregnant with this child. Did you know -- How did you find out that R was dating, or was seeing, rather, Donnie Kirkpatrick?

A. I don't know what month it was. It was before Christmas. R came, upset, to me, because her girlfriend was going to tell me that she and Donnie were seeing each other, and so she told me first. I believe that's how it happened.

Q. All right. Prior to that time,

did you even know that she and Donnie were seeing each other?

A. I had no idea.

Q. Did you know that R had been going out to the Kirkpatrick ranch fairly frequently?

A. Yes.

Q. What did you think she was doing out there?

A. I thought she was visiting with Diane, the sister of Donnie. And she talked about Diane a lot. I was upset that she was out there so much, and I kept pestering her to bring Diane to our house for us to feed her once in a while, but she said that Diane felt uneasy at our house and that it just wouldn't work out that way.

Q. Mrs. S , after you found out that there was a possibility that R

was pregnant, did you take any steps to prevent R from seeing Donnie?

A. I tried. At Christmas -- Well, I think it was -- [122] It was around Christmas time. I don't know if it was still December, or January. We were visiting my mother. And R was very very upset and she asked if she could talk to me, if I would promise not to say anything to her dad, and I said yes. And she told me that she had been having sexual intercourse with Donnie at that time. And that was a pretty heavy thing to handle. I tried very very hard, then, to insist that she never be alone with him, and that she was going to see Diane, and that she would not take rides from Donnie in the car, things like that. I rode her awful hard, and I was on top of her an awful lot, and her daddy saw this. He -- I'm not very

good at hiding my body language; I can say the right things, but I don't act them out the same way. And he began to get on her a little bit, too, because he could see my anxiety. One day she said to me, "Mother, you're simply going to have to trust me." And I thought, yes, I need to trust her, and I did.

Q. Do you recall how much time lapsed between those events and when you finally found out that she was in fact pregnant?

A. That was in -- It was around Christmas time. I don't know before or after Christmas. And I found out she was pregnant the last of August, after we had just returned from the Netherlands. We had been in the Netherlands all summer. She had been pregnant while we were in

Holland, and [123] she never said a word.

Q. How did you find out that she was pregnant?

A. She had gone to Kansas to visit a girl who had formerly lived with us. This had been an unwed mother, and she wanted to go to college, and she wasn't allowed to live in the dorm, so we opened up our home for her, and after the semester was over, she went back to Kansas and had her baby. And R had gone down the summer before to help her out. And she asked to go down and see Donna again, and so we bought her a bus ticket and put her on the bus. And T and I were watching television in the evening, and she walked into the house with Donnie, and it was -- We were not expecting her home, and -- Well, when she walked in with Donnie, my heart immediately told

me what was wrong.

Q. Did you and your husband discuss this matter in detail or at length -- I'm sure you did -- with R , about the alternatives that she had?

A. Yes. When she and Donnie came in, they both had their heads hanging down pretty low. Donnie refused to ever sit down; he never did feel comfortable enough just to sit down on a chair that night; he stood the whole evening. They said they had come to pay their dues, and that meant that they would get married. And she was only fifteen, and I know something about teenage marriages, how fragile they are, especially having to get married, how much more difficult it is. It's [124] trying to get ahold onto two roles at once as a young adolescent and I just could not see that a fifteen-year-old girl could

get married and handle marriage and motherhood at the same time and go back -- keep going to school. She still had three years of high school yet to go. And knowing, also, she might not finish high school. And if there were a divorce in the future, or if she kept the child, they usually live on poverty level. It would mean all kinds of difficulties. We examined every kind of possibility there was. And, of course, there are no good solutions in a situation like this.

Q. Mrs. S , I'm sure that you and your husband discussed this over some period of time as to the options. Did you also discuss the options with Donnie?

A. Yes.

Q. What was his attitude during this period of time?

A. Ambivalent. He didn't know what to do. I couldn't blame him; he couldn't know what to do. He would be willing one moment to do whatever R wanted and whatever was best, and then he would turn around and say "I can't do this." We didn't feel it was our duty to push Donnie to make the decision. We wanted for him -- I mean, that was his own decision to make. But we made it clear that we didn't feel that marriage was an option. And R was ambivalent, also, going from one point to another, wanting to get married and then realizing how young she was and school and everything. And we just simply said, [125] "As your parents, at this point we cannot permit you to marry. If at majority age you still feel this way, that's your decision, but at this

point, we have a responsibility to you to make this decision for you that you cannot marry at this point."

Q. I believe you and your husband brought R to Abilene in August of 1980?

A. (No audible answer)

Q. Have you ever visited in the home of the Kirkpatricks? Did you visit in their home during the time that R was down here in Abilene?

A. Yes, we did.

Q. Did they invite you over to their house?

A. Yes, they invited us.

Q. What was the purpose of your visit? Was it to discuss the obvious? I'm sure it was.

A. Yes.

A. Did you know the Kirkpatricks

prior to all this happening?

A. I had met Hazel Kirkpatrick several times and had visited with her shortly. She had been in the hospital in Lincoln. I'm not sure now what she had. I think it was a flare-up of diabetes. But at any rate, I knew she was in the hospital, and I had gone to visit her in the hospital. And it was my first meeting with Mr. Kirkpatrick.

Q. Well, you obviously talked about what was going [126] to happen. Did the Kirkpatricks express any opinion one way or the other as to what would be the best thing for the child?

A. Yes. They -- They expressed that it would be best if R and Donnie were married, that that was the right thing to do.

Q. Did they say anything about the rights, or the best thing for the child?

A. No. It was the right thing to do. I was -- Let me think. There was one point that I got upset because Mr. Kirkpatrick mentioned that Donnie and R wouldn't have to worry about money, that he could take care of the money, and I got upset and raised my voice and said that money was not an important issue in this matter, but that the child was important, and the type of environment the child would have. And I still feel that way.

Q. Well, did you get the impression that the Kirkpatricks felt that it was the best interest of the child that was the most important thing?

A. No, I didn't get that impression. I got the impression that marriage, right or wrong, was the answer for this situa-

tion, that there were no alternatives; that if you get yourself into trouble, you get yourself out.

Q. You have known Donnie some since all this happened, and you have had some dealings with him. How would you characterize him emotionally?

[127] A. I would say he was unstable, because he -- He has difficulty making his own decisions. He's influenceable from all sides. If we talked to him, he wanted to do what R wanted to do; whatever she wanted was best. And it seemed that he would go home and he would talk to his father and he would turn around and say something else. And I have seen Donnie cry. Not that it's a crime to cry, but I think it's just from lack of knowing what to do on his own.

Q. When you arrived at their house back there in October of 1980, did Donnie meet you when you arrived at the house?

A. Yes. He met us in the yard.

Q. What kind of a state was he in at that time?

A. Highly emotional.

Q. Would you elaborate on that just a bit?

A. Well, he came to my husband and talked to my husband. I believe just before this he had called my husband and talked to him for at least an hour on the phone, and then we talked to him that night, and he talked to my husband, he approached my husband. He said, "I just want you to know that whatever R wants, that's what we'll do, but I want you to talk to my parents." And he was just -- I'm sure he was very very worried

about what would happen when we met in this kind of situation. He wasn't present while we discussed this.

Q. Mrs. S , from your knowledge of Donnie's [128] changing moods, would you say that this decision to pursue this matter in this court is Donnie's decision or his father's decision?

A. It's my firm belief that it is his father's decision.

Q. Mrs. S , you and your husband I suppose chose Christian Homes to bring R to; is this correct?

A. That's correct.

Q. Why did you choose Christian Homes as opposed to any other place to take R ?

A. Because of their good track record. We -- We consulted with someone else about where -- what to do or where to go, a social worker, and, for us, he called

Denver and Lubbock and Abilene, and because of his knowledge that Abilene placed their children in homes that were stable and spiritual, we chose Abilene instead of the other places.

Q. Do you have any reason to believe that Christian Homes would not place the child in a suitable home, one that would be in the child's best interest?

A. No, I don't.

Q. When R came down to the maternity home here in Abilene, did you begin to see a change in her attitude, her outlook on life?

A. Yes, we did. Of course, she was put into a public school. I understand that in Abilene all of the pregnant [129] girls go to one school, and not just those from Christian Homes, but all the pregnant girls. And she saw other girls who were pregnant, and she saw some of them who had

gotten married because they were pregnant. She saw all the problems. She talked to us over the phone about how some of them were having trouble with their in-laws and living with other family, and it -- It really opened her eyes up that adolescents make poor mothers. I mean, it's just not a time for motherhood.

Q. Do you feel that R fully understands the important decision that she has made in this case?

A. Oh, yes, I do.

Q. And do you feel that the decision that she has made is in the best interest of the child?

A. Yes, I do.

Q. Could you tell the Court why you feel that way?

A. I feel that a child needs two parents who love it, accept it, and will care for it, and that the home should be

stable emotionally, and that the parents have the ability to give the child the stability it needs to grow and to mature emotionally, spiritually, and mentally, and to provide for its physical needs. I do not necessarily think that wealth is a prerequisite for a good homelife. If the income is adequate, that's enough. And R L is adopted, and I feel that we have done the best we could with her, and knowing our attitude toward adoption and our attitude toward R -- [130] She's as dear to me as my blood children.

Q. You love R just as much as your other children, do you not?

A. She's been a jewel in our lives, and I wouldn't -- In spite of all this trouble, she's very dear. I know that adoptive parents can do a good job and love and accept a child.

Q Mrs. S , of course, the most

important thing that the Court has to determine in this hearing is what is in the best interest of this child. Do you have an opinion as to whether or not it would be or would not be in the best interest of the child to allow Donnie to establish a parent-child relationship with the child and to allow him to take this child home with him? Do you have any feelings about that?

A. I have very strong feelings. I do not feel he is capable of fathering this child. I know that the burden will fall upon his mother and father, and I do not feel that the situation they live in is good for this child. This child is also my grandchild. I don't want it growing up in that kind of situation. The house looks like it is an abandoned home that -- The floors are -- are dirty. I'm not saying they are bad people. I just don't think they should have this child. I want my

grandchild to have the best possible home that she can have. And I don't believe they could adequately give the child the emotional and mental support and the stability it needs.

[131] MR. MYERS: I pass the witness, your Honor.

MR. SCHULZ: I have no questions, your Honor.

CROSS EXAMINATION

BY MR. BROWN:

Q. Mrs. S , when the decision was made to place the child for adoption --

A. Yes.

Q. Whose decision was that?

A. That was R 's decision. The day she -- She wrote quite candidly to us. And she waivered, of course, in her

decisions. And my husband and I had discussed it, and we decided that we didn't know what kind of guilt our daughter could live with, the guilt of giving up the child and never having it again or the guilt of bringing it home and facing all of the different problems that that would bring, and so we decided that it was her decision to decide what kind of guilt she could bear. And when she called home and the baby had been born, we said, "Whatever you do, we are behind you and we support you."

[132]Q. All right. So it was her decision, then?

A. Yes.

MR. BROWN: I will pass the witness.

CROSS EXAMINATION

BY MR. MOORE:

Q. Mrs. S , this child is no blood

relation to you at all?

A. No.

Q. You said you don't think the Kirkpatricks are bad people. Is that right?

A. That's right.

Q. Do you know what their situation is out there, other than going out there and sitting down in their home one time?

A. I know from my daughter's conversations with me what they are like.

Q. Did you know that your daughter had spent a year and a half out there, Mrs. S ?

A. Yes. Yes, I did, and I've looked back on that quite a bit, and I, at the time -- When I was thirteen years old [133] my parents moved to a new town, and it was the happiest year of my life, and I hardly spent any time at home; I spent it with my friends in their homes. And I thought this was the stage she was going through. Plus,

we had just returned from living overseas for --

Q. Did you know where she was?

A. Yes. Well, I thought -- I thought she was at the Kirkpatricks', yes.

Q. You knew she was at the Kirkpatricks'?

A. Yes.

Q. Did you ever consider going out there and -- Obviously, from things you had heard in the community, these were not people that you would be alarmed about your daughter visiting.

A. No.

Q. All right. You had heard things about the Kirkpatricks, and --

A. I had heard nothing about the Kirkpatricks.

Q. You had heard nothing about them?

A. Except from her.

Q. And you let your daughter go out

there and you didn't even take the time to go out there and see what kind of people they were, where they lived and what they were doing, and what kind of people they were?

A. I had met Hazel, the mother, and I had met Diane, [134] the daughter.

Q. So you knew what kind of people they were?

A. I knew what Diane was like. I knew Diane was having problems. R spent quite a bit of time counseling her over the phone. But you must understand that we had just come back from overseas, were going through culture shock; reverse culture shock for us, culture shock for her. And it was very very difficult for our children to find any kind of -- I can't think of the English word. It means something to hold onto tightly, that would give stability and a feeling of acceptance. I

don't believe you understand the alienation that we were feeling as a family, but especially our children were feeling, an alienation from so many different things in this country. And R was searching desperately for a type of situation that was -- that had been present in Holland, and a very very close friendship like exists in Holland that does not exist in this country.

Q. Well, I understand all that, but you --

A. But that is why I allowed her to do this, because she needed to find something, and I was trying to help her find that.

Q. You at least made a determination that that was a safe place for her to go, in your own mind?

A. Yes, I had.

Q. For the year and a half?

[135]A. Yes. I had no idea that Donnie -- Because of his age -- I had met Donnie. I had no idea that a young man that age would be interested in a fourteen-year-old girl. It never entered my mind.

Q. Of course, sometime in the fall your daughter told you that.

A. Yes, she did.

Q. She told you that she was having a sexual relationship.

A. She did not tell me she was having a sexual relationship in the fall. She told me in December, at Christmas time. And if she had --

Q. Did you forbid her to go out there at that time?

A. Yes.

Q. You forbade her to go?

A. No, I did not forbid her to go.

Q. Did you tell her that she could not see Don again at that time?

A. In November?

Q. Yes, ma'am.

A. If it was in November, before Christmas -- No, I just warned her and talked with her personally about it.

Q. You didn't tell her she couldn't see him?

A. No. Because, you see, I was not given the impression that there was anything really wrong going on between her and [135] Donnie at that time. If she did, I'd have --

Q. Now, I am talking about the time that she told you she thought she was pregnant.

A. Oh, you mean in December?

Q. Yes, ma'am. Did you forbid her at that time to see Donnie?

A. I told her if she saw him she had to be in the presence of someone else at all times.

Q. So you didn't keep her from going back out to the Kirkpatricks'?

A. No, and it was a mistake on my part.

Q. You didn't even forbid her to be around Don, did you?

A. I forbade her to be around Donnie alone.

Q. Did you know that Donnie was bringing her home and letting her out in front of your house?

A. At that time -- From that time, as I recall, only Hazel brought her, or Diane. Before that time I know Donnie brought her home, but after that -- Because I watched.

Q. So if he says and she says that he was bringing her home, you just didn't see it?

A. That's true. Because as far as I'm aware, Hazel brought her home. Hazel

picked her up, or Diané, after that point.

Q. You said that Donnie was very influenceable. Did [136] you know that R was telling him that he must sign these papers if he loved her, if he truly loved her and didn't want to hurt her that he must sign these papers and give up any rights that he had?

A. What do you mean by that?

Q. Just that.

A. She said that to him?

Q. Yes. Did you know that?

A. I don't know that I would know it in just those words.

Q. She never told you that?

A. I can't say that she said it in just those words. Now, let me think.

Q. If Donnie cared very deeply for your daughter, if he loved her and she was pleading with him to give up the child,

give up any rights --

A. Yes.

Q. -- and telling him if he really loved her that's what he would do, if he cared about her, if he cared about the child, he would give up any rights that he had, would that explain why he may have had a hard time making a decision in this matter?

A. If he is influenceable, he is influenceable from two sides.

Q. That wasn't what I asked you, Mrs. S .

[138]A. I'm sure that R L feels that way.

Q. And she told him that?

A. Am I supposed to say what she says?

Q. No, ma'am. You are not -- All I want you to do is answer my questions.

MR. MYERS: Your Honor, we will object to him badgering the witness

in this manner. He is trying to --

MR. MOORE: Can I get an answer to my questions?

THE COURT: Let me ask you, if you will, to do this: just answer his questions outright, just as quickly as you can, and move along, okay?

MR. MOORE: Preferably with a yes or no.

THE COURT: Answer the best you can, okay? Thank you.

MR. MOORE: Q. Mrs. S , would it have been difficult for Donnie to have made a decision if your daughter was telling him, "If you love me, Donnie, you'll do what I tell you do do; you will give up your rights to this child if you care about me"?

THE WITNESS: A. I guess I will have to say yes, it would be difficult, especially if he had a father who was

telling him just the opposite.

MR. MOORE: That is all the questions I have.

[139] MR. MYERS: I just have two very short questions, your Honor.

REDIRECT EXAMINATION

BY MR. MYERS:

Q. Mrs. S , let me show you what has been marked as Petitioner's Exhibit Number One, and let me direct your attention back to October of 1980. If you would, look at Petitioner's Exhibit Number One. Would you tell the Court whether or not that substantially reppresents the way the interior of that house looked to be the evening that you and Mr. S went over there?

A. Yes, except for -- The table was cleared.

Q. Is that the only difference?

A Yes.

MR. MYERS: That is all I have, your Honor.

MR. SCHULZ: I have no questions, your Honor.

MR. BROWN: I have no questions.

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[140] THE COURT: You may step down. Thank you. Well, let me ask you a question or two. Do you work? Are you employed?

THE WITNESS: A. I'm -- At the moment, I just got a job as a half-time instructor at York College, and I'm a full-time student.

THE COURT: What do you instruct in?

THE WITNESS: A. Child development, personal development, and dynamics of home economics.

THE COURT: What does your

husband do?

THE WITNESS: A. He is head of the Bible department at York College.

THE COURT: And you all have been overseas in missionary work or something?

THE WITNESS: A. Yes, sir.

THE COURT: Okay. Thank you. That's -- Let me see. I may have some more notes here. And what religion are you, if I may ask? I assume you are --

THE WITNESS: A. Church of Christ.

THE COURT: Church of Christ? And you were in the Netherlands on missionary work?

THE WITNESS: A. Yes.

THE COURT: Is that what you were doing? How long did you all stay there?

THE WITNESS: A. Fourteen years.

[141] THE COURT: And you all just kind of moved back, joined the United States, right?

THE WITNESS: A. That's right.

THE COURT: I imagine that was a shock. Thank you for coming down.

Go ahead.

MR. MYERS: I will call Mr. S , please.

T S ,

having been duly sworn, testified on direct examination by Mr. Myers:

Q. Would you state your name, please?

A. T S .

Q. And Mr. S , how are you employed?

A. I am a professor at York College in

York, Nebraska.

Q. And what do you teach at York College?

A. Biblical subjects and history.

Q. Mr. S , I believe you are the father of R L S , who is one of the parties to this action; is that correct?

A. Yes, sir. I am the adoptive father.

[142]

Q. And you have come here to testify in this proceeding and to give some of your thoughts and opinions; is that correct?

A. Yes, sir.

Q. Mr. S , let me direct your attention back to August of 1980. I believe it was then that you first became aware that R was pregnant; is that correct?

A. Yes, sir.

Q. Would you relate to the Court how you learned of this?

A. Well, that was simply made known to

us by both R and Donnie. This particular evening they came to us and indicated her condition, and simply stated that she was carrying a child.

Q. Did you know anything about Donnie Kirkpatrick prior to this?

A. Very little.

Q. Did you know that R had been seeing Donnie?

A. Yes. I knew that R had been seeing Donnie. I thought, personally, that it was just a matter of a friendly relationship because of her interest in the family and especially in Diane, a sister of Donnie.

Q. But you knew that she and Diane were very close friends, did you not?

A. Yes, sir. [143]

Q. After you and Mrs. S learned of the pregnancy, I'm sure you had occasion to counsel with your daughter and possibly with Donnie concerning the options that

you had. Would that be a correct statement?

A. Yes, sir.

Q. Would you relate to me the options that you and your wife and R con-sidered concerning her pregnancy?

A. Well, we discounted the option of abortion. We considered the possibility of marriage and discounted that possibility because of what we considered the high risk of a possible future divorce and the consequences for both the child and for these two young people. We also considered the possibility of single parentage, either in the young man's case or her case, and weighed the risks that are involved in that and the consequences for the single parent and for the child involved. And we also looked at the alternative or option of adoption into a Christian family where the baby would have two parents.

Q. In the decision-making process which was involved, was Donnie involved in any way?

A. Only by way of discussion of the options and alternatives that we were considering.

Q. Did he indicate to you feelings one way or the other as to what would be the best alternative?

A. Well, he felt that the best thing to do, as I [144] recall, would be to give consent for marriage.

Q. Did he indicate to you any feeling of great love and concern for the welfare of the child, or was his emphasis primarily upon marriage?

A. Well, as I recall, the primary emphasis in our discussions together was on the matter of marriage, that it was the proper thing to do in this instance to resolve the matter by marriage.

Q. Has he ever indicated to you in any way a feeling that in the event that he and R would not be able to be married that he would still want to take the child and love the child and care for the child just as though it was his child?

A. Well, it seemed to me from our discussions that the major interest that he expressed was in marriage with R , and that the child would be, in a sense, a binding factor in a marriage, and that he felt that marriage was the right thing to do.

Q. Mr. S , do you feel that that is at least partially a motive of the proceedings that we are having here this afternoon?

A. Well, in my judgment it is, yes.

Q. I believe you and Mrs. S brought R down here to Abilene in August of 1980. While she was here, did you and

your wife have an occasion to go out to the Kirkpatricks'[145] home and discuss this matter with them?

A. Yes, we did.

Q. Would you relate to the Court the nature of the discussion that you and Mr. and Mrs. Kirkpatrick and Mrs. S had?

A. Well, we -- In the beginning, we simply discussed the normal things like the weather and how things were going. And then when our discussion turned to the matter at hand, the Kirkpatricks, especially Mr. Kirkpatrick, felt that the proper thing to do in this situation was for these two young people to get married, that it was their responsibility, that the fact that a child was going to be born was their responsibility and that the way to deal with that responsibility was for them to enter into marriage. He also in-

dicated that it was not a matter of money and we indicated in response that we were not concerned about that aspect of the situation as much as were about the welfare of R and the child that was going to be born into the world, and that the matter of marriage was not a primary consideration -- or that the matter of money was not a primary consideration, and we felt that a good Christian home for this child was our primary consideration. And we -- I received the strong impression that Mr. Kirkpatrick, especially, feels that the situation needed to be righted by the acceptance of responsibility on the part of these two young people and that the right thing to do was to [146] be married.

Q. Did you get the impression that Mr. Kirkpatrick felt that it should be marriage at any cost, even if that cost sacrifices the welfare of the child?

A. Yes, I did. That was the primary motivation from his point of view, that the only thing to do was for them to get married.

Q. Did he express to you any opinions concerning adoption, how he felt about adoption?

A. Well, he felt that that would not be the right thing to do. When we expressed that this was our point of view, he was not in agreement.

Q. Well, did he -- Do you recall him saying anything to the effect that, None of my genes are floating around in someone else's -- with someone else's name, or something?

A. Yes, sir. He stated that. And I concluded from that that he meant that in a situation like this where a pregnancy had occurred out of wedlock that the responsibility was a matter of the

two people involved and that responsibility required their getting married.

Q. Let me just ask you one specific item, item, Mr. S . Were you present when some papers came to your house for Donnie to sign? I believe R was there, also. Some forms, things like that. Do you recall that?

A. Yes, sir.[147]

Q. Could you relate that incident to the Court?

A. Well, with regard to the signing of these papers, it appeared to me, as one of the parties present, that it was necessary for R to take the initiative in indicating what the nature of the papers were, how they should be filled out, what the consequences of the signing of the papers would be, and so on, and that Donnie was uncertain in what needed to be done in this case, and

that she was, in a sense, the guiding person or the leading person in explaining the nature of the papers and the consequences that were involved.

Q. So she had to explain to him how to fill out some forms?

A. Yes, sir.

Q. Do you recall what that form was? Was it a complicated form?

A. I don't recall exactly the nature and content of the form.

Q. Was it --

A. I couldn't be specific about it.

Q. Was it a general information form about family background, things like that?

A. I think it was, yes.

Q. Did you get the impression from that that Donnie was not too bright?

[148] A. Well, that's -- That's a difficult question to give an answer to. I just felt that, at that moment, at least, that he was dependent upon R to adequately, properly fill out the form.

Q. Mr. S , we are here today to determine two things. Ultimately, it is what is in the best interest of the child. But I would like to ask you, first of all: Do you have an opinion as to whether or not it would be in the best interest of this child to allow Christian Homes to place this child for adoption? Do you have an opinion as to that?

A. Yes. I do have a strong opinion that the child should be adopted through Christian Homes.

Q. Can you give the Court some background on the basis of your opinion? What do you base your thoughts on?

A. Well, when my wife and I dis-

cussed this together -- And she has access to a lot of family materials at the University of Nebraska. We talked, also, with family counselors. We felt at that time and feel now that the risks of divorce at her age, and a marriage at that age, are very high, and the consequences for the child under question at the moment could be very negative; other children could be born into that marriage and the consequences for them could also be negative. We also are familiar with studies on one-parent situations. And we simply came to the conclusion then and feel strongly now that the child in this instance would be in a much better [149] situation having two parents, being in a Christian home and having the advantages of those two parents, than in any of the alternatives.

Q. Well, let me ask you one other question, then. The converse of that would

be: Why would it not be in the best interests of the child to allow the child to go back with Donnie, to have Donnie named as the parent, and to have Donnie raise that child just as though it were his child?

A. Well, we know, on the basis of studies, once again, what we consider are the negative aspects of the one-parent situation. I personally feel that because of Donnie's physical handicap, the epileptic matter, that he is strongly dependent on his father, especially; on both of his parents. His father indicated to us in a discussion with him that evening that he needed to be concerned about when Donnie was involved in using farm machinery, if he was up on high places, that there was always that concern. And another matter that bothered me at that time and continues to do so is that Don had indicated

on at least four different times in our own home that even though his father had strongly suggested that there should be a marriage result from this situation that he would nevertheless abide by R 's decision with regard to what would happen to the child. And that was repeated on a number of occasions. And there seems, to me, at least, to be a certain amount of instability in there to continuously say[150] and promise one thing and then to make a contrary decision at the final moment. And if I, as a parent, or person, am going to put a precious thing into someone else's hands, I would like to feel that there is a stability there to make a firm decision and then to stay with it, and not to say one thing at particular moments and then to do something contrary in the final analysis.

Q. Mr. S , whose decision do you

feel it was to pursue this matter in the court today as Donnie is doing? Do you feel that that was his decision or do you feel like it was his father's?

A. Well, that's difficult for me to say. I feel that it was primarily a matter of his father's insistence, because Donnie had indicated to me personally and to our family in our home that this course of action would not be followed.

Q. Do you feel that he would not have pursued the matter had it not been for the insistence of his father?

A. Well, that is my feeling, because he had indicated to us that this would not take place.

Q. Mr. S , just a couple more questions. Are there any plans for you and the rest of your family to move from York back in Nebraska?

A. There are no definite plans at

this point.

Q. Have you and your wife discussed this matter with anyone?

[151] A. We have discussed the matter of what course of action we might have to take if that child were brought back into our community. That may necessitate a move for the welfare of the child as well as her welfare, as well as for Donnie's welfare.

Q. You don't believe that it would be a good situation to have that child growing up in a small community with the knowledge that its father is living down the street from it, do you?

A. I think it would be an impossible situation for her.

Q. Are you telling the Court that any decision concerning a move, then, would be based upon that feeling?

A. Yes, sir.

Q. Let me direct your attention back to October of 1980, Mr. S . And I will show you what has been marked as Petitioner's Exhibit Number One. I would like to ask you whether or not, on the evening that you and your wife went over to that house, did the house that you went into look substantially as that picture depicts?

A. Yes sir.

Q. Okay.

MR. MYERS: I pass the witness, your Honor.

MR. SCHULZ: No questions, your Honor.

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[152] MR. BROWN: No questions.

CROSS EXAMINATION

BY MR. MOORE:

Q. Mr. S , you didn't have any

influence upon K 's decision in this matter, did you?

A. What we did, sir, is to discuss with her the different alternatives as we were able to put them together with the research that my wife has done in family studies and with the information we had received from family counselors. And we talked together about the alternatives, and we told her that the final decision would be hers and that we would not only accept but stand behind her in whatever decision she finally made.

Q. Did you tell her that she could get married if she wanted to?

A. We told her we would not give her permission at that time to get married.

Q. So to that extent, at least, you did influence her decision?

A. Yes, sir. To that extent.

Q. Okay. She could make any choice

she wanted to [153] but to get married; "You accept any alternative you want except marriage, because that's out."

A. Well, I thought you meant with regard to the child, the final disposition of the child. Indeed, we did say to her that we would not give her permission, parental permission, to be married.

Q. Well, marriage would be a final disposition for the child.

A. Yes, sir. I see what you are saying.

Q. What would be the difference, Mr. S , in this situation, if she lived ten miles away than it would be if two people were married and had children and got a divorce and the children stayed with the father and the mother moved across town? What difference would that be?

A. For whom?

Q. For the children.

A. Well, it would mean that the children were not living with two parents under the same roof. They would have to know the reason why that was not the case. And it would seem to me that it would put a great deal of pressure on both the children and the two parties involved.

Q. But it would be no different than a divorce.

A. Well, it -- In one -- I think, if I am understanding what you are saying, that -- A divorce is a legal transaction that indicates a fixed relationship based on law, [154] and if you understand by the other relationship that this kind of legal transaction has not taken place, then it would seem to me that there is the matter of the legality and what that means to all parties involved.

Q. Mr. S . thousands of people in this country divorce every year. Is it

your opinion that a divorced single parent cannot be a good parent?

A. No, sir. It is not my opinion.

Q. Single, divorced parents do an excellent job, many of them have done an excellent job of raising children in this country, are doing so today; isn't that true?

A. I assume that it's true. I have not looked at the evidence of that.

Q. Have you known people that are divorced, Mr. S ? Have you even known anyone that was divorced?

A. Yes, I have known people who have.

Q. That have children?

A. Yes. In some cases I do. And the results of those are as negative as they are positive.

Q. You will agree, as a general proposition, that a divorced single

parent can be a very very fine parent?

A. Can be. That's true.

Q. All right.

MR. MOORE: That is all the questions I have.

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[155] REDIRECT EXAMINATION

BY MR. MYERS:

Q. Mr. S , a divorced single parent, of course, would have taken on the legal responsibility of rearing whatever child might be the subject of that marriage, had they not?

A. I would assume so. In the case of our own relationship to this young lady, we are adoptive parents, and we went through a definitive screening process, an investigative process, before we gained permission to adopt the child and to be accepted as parents in an adoptive situation, and so I would assume

that parentage is a matter of not simply conceiving children into the world but of having qualifications to be parents.

Q. Donnie Kirkpatrick has not taken on any of the responsibility of rearing this child, has he?

A. To my knowledge, no.

MR. MYERS: I will pass the witness.

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[156] RECROSS EXAMINATION

BY MR. MOORE:

Q. Mr. S , that is just exactly what this proceeding is about; Mr. Kirkpatrick is attempting here to establish the fact that he can accept the responsibility; isn't that true?

A. I assume that't true.

Q. He is asking this Court and this agency to let him be a parent and accept the moral and legal and financial responsibility for this child, isn't he?

A. I assume so, yes.

MR. MOORE: That is all I have.

MR. MYERS: I have nothing further, your Honor.

THE COURT: Okay. Do you rest?

MR. MYERS: No. I have one other witness.

THE COURT: Okay.

MR. MYERS: I will call Nancy Miller.

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[157] NANCY MILLER,

having been duly sworn, testified on direct examination by Mr. Myers:

Q. Would you state your name, please?

A. Nancy Miller.

Q. Nancy, how are you employed?

A. Executive Director of Christian Homes of Abilene.

Q. What formal training have you had, Nancy, your college and whatever graduate work that you may have had?

A. I have a bachelor's degree in education from A.C.U. I have a master's degree in psychology from Kansas State Teachers College.

Q. And what is your work experience since the time that you graduated from A.C.U.?

A. Following my graduation from

Abilene Christian, I taught school for three years in the elementary grades, and then went back for my graduate work, and following that was a school psychologist in Mason City, Iowa. Then I came to Wichita, Kansas, where I worked for five years as director of social services for Maude Carpenter Children's Home, then moved to Abilene to Christian Homes of Abilene as director of social services for two years, and for the last nine years have been executive director.

Q. Have you attended any workshops that would be beneficial in the type of work that you do?

[158] A. Yes. I attend workshops in child care and adoption quite often. I'm required -- I'm a licensed child care administrator, and I am required to have a certain number of hours of training each year to maintain that license.

Q. Are you a member of any special organizations or special committees?

A. Yes. I am a member of the Southwest Society of Executives of Homes for Children. I am a member of the Texas Association of Licensed Children's Services. I've been a member of -- I'm not right now, but I have been in the mental health association and served on the Citizens Against Crime committee here in Abilene.

Q. And have you been a speaker in any workshops, seminars or schools, Nancy?

A. Yes. I speak quite often at seminars and retreats and schools on the subjects of child care and adoption, and have been in the public schools for some in-service training with teachers; have conducted family -- have been director of family relationship seminars through our agency, and have spoken in a number of adoption workshops with other agencies.

Q. Nancy, what are the primary functions of Christian Homes of Abilene?

A. Our main three services are adoption, foster care, and maternity care for unwed parents.

Q. And yourhome is licensed by the State of Texas, [159] I believe, is that correct?

A. Yes. Our maternity home is licensed by the State Health Department. Our child placing program is licensed by the Department of Human Resources.

Q. And your licenses are current at this time; is that correct?

A. Yes, sir.

Q. Nancy, do you have any idea as to how many children Christian Homes has placed for adoption since the beginning of Christian Homes?

A. It's about 590 children.

Q. And do you have any idea how

many girls have been taken care of in the maternity care unit?

A. I believe it's about 485, 490; somewhere right in there.

Q. And the foster care, how many children have been cared for through the foster care facilities?

A. About 800.

Q. Nancy, through your association with Christian Homes of Abilene, have you become acquainted with R L S ?

A. Yes, I have.

Q. And is this R L who is seated by her attorney, Mr. Stan Brown?

A. Yes.

[160] Q. Have you become familiar with her desire to place her child with Christian Homes and to place that child for adoption?

A. Yes, I have.

Q. Have you had an opportunity to

discuss this matter with R concerning her desires in that matter?

A. Yes.

Q. And have you also had an opportunity to discuss the matter with Mr. Donnie Kirkpatrick?

A. Yes, I have.

Q. Would you relate to the Court the discussions that you have had with Mr. Kirkpatrick?

A. I only talked with him one time. He called me on the afternoon of January 13, I believe it was. It was on a Tuesday. It was the Tuesday after her baby was delivered on Sunday. He said that he had talked to R and he had called me to -- I don't remember exactly what he said the first sentence or two, if it was to talk about the papers or what he should to, but it was about his decision. He was having -- He was disturbed and upset. He said that

he had talked to R , and she -- he knew that -- No; he asked me if she was going to sign the papers, and I said yes, that she was going to sign the papers to place the baby for adoption because she felt that was the most appropriate thing to do for the baby, and he said he didn't know what he wanted [161] to do because he had said that he wanted to agree with R but now he didn't know if he should. He indicated to me that he was getting a lot of pressure from home about the decision. He asked me if I knew what it was to be told what his responsibility is since he conceived the child, and then he -- We talked about forty minutes, thirty or forty minutes that afternoon, and during that time he told me a couple of times that he would sign the papers, and then he would say, "No, I don't know if I want to or not." And he asked me if my conversation

with him would go against him in court, and he was -- he said he felt sure that I would tell the judge and it would hurt him if I did that. And he said it was very very hard for him. I told him that I knew it was, that it was always a difficult decision for a parent to make under these circumstances. He waivered quite a bit, vacillated back and forth in what he wanted to do. And he asked me if I thought if he signed the papers -- I mean, if he didn't sign the papers and he tried to get the baby, would R eventually come back to him. I told him I didn't feel she would, based on what she had said to us in recent weeks and what her feelings seemed to be at that time, but he would have to talk with her about that. And so then he said again that he cared -- he told me that he cared for R and that he cared about the baby, but he wanted to do the right

thing. So our conversation closed that afternoon on the telephone with his saying [162] that he thought he ought to sign the papers, and if we would get them ready and send them to him he would. But I forgot to say one thing. I mentioned to him that what -- He asked me what would be in the papers, and I told him, and I told him that one of the things that he needed to understand was the statement in there that said that he would have abandoned the mother and the baby, and that we realized that he cared about R and that he cared about the baby and he had shown an interest in her, but that that is the nearest terminology in the Texas Family Code that we can use in our relinquishments to be the closest to what this situation was.

Q. You are talking about a parental termination?

A. Yes.

Q. Obviously, of course, he is not a parent at this time, is he?

A. Right. But we -- Okay. But that's -- The papers that we send would have that in it.

Q. Did Donnie seem to vacillate back and forth about his position as to what to do from moment to moment?

A. Yes. Three of four times during that conversation he did.

Q. Has Christian Homes tentatively selected a family unit as an adoptive family in this case?

A. Yes, we have.

Q. Would you explain to the Court the procedure that [163] is gone about to make that determination?

A. Well, we -- Of course, the first would be making adoptive studies of the families that apply, the family homes, and we do an in-depth adoptive study on each

family that applies, which involves getting references and making personal contacts with them in the office and in their home.

Q. Approximately how many inquiries do you receive on a yearly basis?

A. On, between three hundred and three hundred twenty-five a year.

Q. After you receive that initial inquiry, what are the following steps that are taken?

A. Well, the first step taken is to send them a preliminary form to fill out and return to us, and if they are -- meet certain requirements that we have, like live in the area in which we place and have the number of children with which we are -- or don't have the number of children with which we place infants, then we pursue -- we invite them to an adoptive group meeting to which they come and meet with our caseworker, and at that time they are given

formal applications. And then it is after that that the adoptive study starts. And once the adoptive study is completed and they have -- if they have been approved, then they are on the waiting list, so to speak. And as we decide on a family for a baby, we have anywhere from three to five or maybe more, but [164] usually I bring it down to three to five families that we bring in to a committee meeting of members of our staff who have been involved with the parties involved in this, to consider this placement, and that would be our adoption caseworker, who has done the adoption case study, our maternity caseworker, who has worked with the natural parents, and the foster care worker, who has worked with the child while it's been under care, and the director of social services, or myself. And we look at all of the information, the background information on the natural

parents and on the adoptive family, and look at the child, and if it's -- you know, particularly if it's an older child, and make a determination as to what we feel is the most appropriate family for that baby.

Q. Now, the child, the subject of this suit, is approximately eight months old; is that correct?

A. Yes. About seven and a half.

Q. Do you all try to place a child as soon after birth as possible.

A. Yes. We place it as soon after termination hearings as possible.

Q. And you try to get the termination as soon after the birth as you can?

A. Yes.

Q. That is so that the child can go into the new home at the earliest age possible; is that correct?

[165] A. Yes.

Q. Nancy, is there any specific group of people that are excluded from consideration? Well, let me just be specific. Is there any requirement that adoptive parents be a member of a particular church before they can qualify as potential adoptive parents from Christian Homes?

A. Our agency is supported by the Church of Christ, and we give preference to families who are members of the Church of Christ. We place twenty-five or thirty children a year, and as a result of getting between three hundred and three hundred twenty-five inquiries, that obviously means that we place primarily with members of the Church of Christ, and particularly our infants. We refer other families who contact us to other agencies, and to those, particularly, of their own religion, because most non-profit religious or church-related child-placing agencies do give

preference to their own religion.

Q. But because of just the sheer number of applicants that you have, it is pretty well narrowed down to the preference that you give because of your association with the Church of Christ?

A. That's correct.

Q. During the years that you have been associated with Christian Homes, have you ever known of an occasion where a child was brought to your home for adoption and you [166] have not been able to place that child?

A. Only some older children that have some really special needs that we have in long-term foster care, like a little boy with M.S. that we have in care, and an older child, some teenagers. All of our younger ones, infants and pre-school and early school age, we were able to place for adoption, whatever the problem.

Q. And you presently have a family that is ready and willing to take this eight-month-old child into their home and rear it as their child; is that correct?

A. Yes.

Q. And this family has met all the stringent requirements that you have imposed upon yourself over the years?

A. Yes.

Q. Nancy, I believe you have prepared a list of expenses, et cetera. Could I have that marked, please?

(Thereupon, the instrument was marked for identification as Petitioner's Exhibit Number Two.)

Q. Nancy, before we go into any of the matters set out on this exhibit, I just want to ask you if you prepared this and if this reflects the expenses that Christian Homes has had in relation to the birth of this child.

A. Yes, I did, and it does.

Q. Accurately reflects the expenses?

[167] A. Expenses, yes.

THE COURT: Any objections?

Are you offering that into evidence?

MR. MYERS: Yes.

MR. SCHULZ: No objection, your Honor.

MR. BROWN: No objection.

THE COURT: It is received.

(Thereupon, the instrument previously marked for identification as Petitioner's Exhibit Number Two was received into evidence, and is attached hereto.)

MR. MYERS: Q. Nancy, let's start off with the expenses of the maternity home care. What is the -- On this particular case, what is the total expenses for the baby child of R L . S .?

THE WITNESS: A. For care in the maternity home; is that what you are asking?

Or the baby?

Q. No; for the care in the maternity home. Do you have a monthly rate that you charge on that?

A. Yes. Well, we have a monthly rate for the girls. It's a sliding scale, from twenty-five dollars to a hundred and twenty-five dollars. But our cost per month is a little over three hundred dollars.

Q. So in this particular case, if she stayed there five months, your total expense was --

[168] A. Fifteen hundred dollars.

Q. And have the S made any payments toward that expense?

A. Yes. They have paid five hundred dollars. They paid each month, a hundred dollars a month, while she was in there.

Q. All right. From the record that

you have prepared, the hospital bill was how much?

A. $2,144.59 for R .

Q. And Doctor Estes's bill?

A. I'm sorry; I included his bill in that.

Q. All right.

THE COURT: Mr. Myers, is this pretty self-explanatory? I can see what it reads.

MR. MYERS: All right.

Q. The total of the expenses that Christian Homes has had, Nancy, is what?

A. Okay. It's $4,256.03 for R and her baby, the medical care and hospital care and the in-home care and all.

Q. Have you received any money fron Donnie Kirkpatrick for any of these expenses?

A. No.

Q. Has he offered to pay you any money?

A. No.

Q. After the child was born, has he made any inquiry [169] of Christian Homes as to the welfare of the child?

A. No, other than that one time that I talked to him on the phone right after the baby had been born.

Q. Right after?

A. I have not talked to him since then.

Q. Okay. Nancy, do you have an opinion as to the best interests of this child? After all, that is what we are trying to determine this afternoon.

A. Yes.

Q. What, in your opinion, would be the best interest of this child?

A. My opinion is that the best interests for this child would be to be placed for adoption in a home where two -- there are two parents who can provide

the stability for the home, who are prepared for it, and who can provide the parenting skills as a mother and father that I think it should have. I think that we can provide a family for that home who has planned for and prepared for a baby and who can -- well, give it the, as I said, the stability and the security and the spiritual training of the home that we would -- our agency would want for it, and also that I believe that for which R has given us the responsibility to find a home for.

Q. Nancy, you have had the opportunity of listening to the testimony this afternoon. Do you have an opinion as to whether or not it would be in the best interests of the child [170] to allow the child to be legitimized by the father and return back to York, Nebraska, with Donnie Kirkpatrick?

A. Yes, I do.

Q. What is that opinion?

A. My opinion is that that would not be in the best interests of the child.

Q. And from what you have heard through the testimony, what do you base that opinion on?

A. On the testimony and on -- Well, on the testimony that I have heard today and the fact that -- I don't feel that Donnie can provide the stability. It appears to me that he does not live independently and that it would be his family or someone within his family raising the child more than Donnie. I am concerned about his inability to make decisions on his own and to vacillate so much as he has in our conversations with him, and from what I have heard today, also. I also feel that the testimony today has shown some things about his home that would not be in the best interests of the child from our standpoint

of wanting to find a home that would provide spiritual training for the child and the -- Well, I'll stop there.

Q. Is there anything other than the spiritual training that would cause you to believe that it would not be in the best interest of the child to be brought up in that home environment?

A. Yes. It doesn't -- It does not -- Well, I would [171] be concerned about the drinking on the part of Mr. Kirkpatrick and, again, what appears to be his making decisions for Donnie. I would be also concerned about the child being brought up in that community with R 's family living there. And R has made a decision and a plan for her baby as far as she is concerned, made it out of love, I think, and out of concern for the best interest of the child. I'm not sure that child would be told that, since Donnie's parents seem to

feel like she gave it away and that she didn't feel love and care for it, and I think that could be very damaging for the child to grow up believing that her mother felt that way about it.

Q. Is Christian Homes here this afternoon taking the action that they are taking because of R 's desire in this matter?

A. Yes.

Q. And that is one of the strong things that guides Christian Homes in the placement of children; is that correct?

A. That's correct.

Q. And do you feel that P -- You know her personally. Do you feel that she loves the child any less because she has made this very hard decision to make about her child?

A. I'm sure she doesn't love the child less.

MR. MYERS: I pass the witness.

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[172] MR. SCHULZ: I have no questions.

MR. BROWN: No questions.

CROSS EXAMINATION

BY MR. MOORE:

Q. Ms. Miller, has Christian Homes ever adopted out a child to a family that wasn't Church of Christ, ever?

A. No. Not to my knowledge.

Q. Has that got anything to do with your testimony here today, that he is not one of the chosen?

A. No.

Q. But you have never adopted one out to anybody that wasn't Church of Christ?

A. That's correct, to my knowledge, since I've been there.

A. Okay. You had in your question-

naire that he was a Presbyterian; you had that information?

A. Yes.

Q. Have you told the prospective parents of this child that you are going to adopt it out to that it may be an [173] epileptic?

A. No. We don't talk to them until we know the child is legally --

Q. Are you going to do that? Are you going to tell the prospective parents that there is a very very good change that this child well be an epileptic because its father was?

A. Yes, sir.

Q. Don't you think it would be better for a child if -- I'm not saying that it's going to be an epileptic, but if it were, wouldn't it be better for a child to be raised by a parent who had epilepsy himself, if it was his own blood, he knew and

understood his problem, cared for him because it came from his own loin?

A. Not necessarily. I think parents who don't have epilepsy can love and care for a child just as much.

Q. Do you have children?

A. No.

Q. The vacillation that you are worried about. Would it be hard for you to understand, Ms. Miller, that maybe the reason he was vacillating is because this little girl is begging him and telling him "If you don't want to hurt me, you'll do what I want you to do in this matter"? Don't you know it has hurt this boy to proceed with this action when he knew it just totally destroyed his relationship with the woman he loves very dearly?

[174] A. I believe it has hurt him, from what he has said, and the relationship, but --

Q. But don't you know that that would be difficult for him to do that?

A. Yes, I do.

Q. He loves the mother dearly.

A. Yes, I know that.

Q. So why is that -- Why is the vacillation so concerning, if that's the reason for his vacillation, if she's begging him and entreating him and begging him, telling him that, you know, "If you love me, you'll do this for me." Wouldn't that be a -- rather than showing instability on his part, wouldn't that be a showing of nobility? That's a noble act; he does not want to hurt this woman, but he wants his child.

MR. MYERS: Objection, your Honor, He is being argumentative with the witness.

THE COURT: I sustain the objection.

MR. MOORE: Q. Is that difficult to

understand?

THE WITNESS: A. No.

Q. Do you believe that single parents cannot be good parents?

A. I think some can.

Q. Okay. People all over this country, single parents, [175] are doing an excellent job of raising children. Is the fact that he doesn't have any training and doesn't know anything about raising children, does that bother you? My first son -- When my first son was born, I knew absolutely nothing about children.

THE COURT: Mr. Moore, would you please not argue with the witness, and don't testify.

MR. MOORE: All right.

MR. MOORE: Q. Does that bother you?

THE COURT: It doesn't matter whether it bothers her. Just ask her questions about the facts, and I will draw

conclusions.

MR. MOORE: All right.

MR. MOORE: Q. Is that one of the things that makes you believe that he will not be a good parent?

THE WITNESS: A. I'm sorry. Is that one of the things -- The fact that he is single?

Q. Yes, ma'am.

A. No.

Q. Okay. You don't know anything other than what you have heard today about his family, his parents; you've never seen his home. I guess you have looked at that picture.

A. No, I haven't seen the picture yet. I just heard what I've heard today and what R has shared with me while she was at the maternity home.

[176] Q. Did Mr. Bolton, Andrew Bolton -- He was responsible for this case, wasn't

he?

A. He was director of social services at the time she was there, and he supervises all the workers in this area.

Q. Well, did he have some responsibility in this matter?

A. Yes. He talked with Donald in this matter. And the reason was that a caseworker who had worked with her up to this time had resigned, and so we were in a kind of a transition period, and so he did work on this case some. He doesn't ordinarily do that directly with the girls. We were kind of sharing some responsibilities at that time.

MR. MOORE: That's all the questions I have.

REDIRECT EXAMINATION

BY MR. MYERS:

Q. Nancy, even if this family were

members of the Church of Christ, would they meet all of your criteria?

A. No, they would not.

Q. Is you opinion based not only on the fact that Donnie is not married but also that the child is going to be raised not only by Donnie but by a grandmother, grandfather, [177] sister, brother, whoever may be there? Isn't that part of your decision-making?

A. That's correct.

MR. MYERS: I pass the witness.

THE COURT: Any other questions, anybody?

Has Christian Homes ever allowed an adoption to a single person?

THE WITNESS: A. No.

THE COURT: That is all I have. You may step down.

MR. MYERS: Petitioner rests, your Honor.

THE COURT: Any other rebuttal, or any other witnesses?

MR. MOORE: No, sir.

THE COURT: The Court is going to take a five-minute recess.

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[178] THE COURT: All right. It is satisfactory with everyone, I guess, at this point, to allow the witnesses to come in; even though it is a closed hearing, we are not excluding the witnesses at this point; is that correct? Does anybody object? If so, let me know.

MR. MYERS: I have no objection.

THE COURT: All right. Go ahead and have argument at this time. Mr. Moore, you may open the arguments.

MR. SCHULZ: There are some more

people on the way, Judge.

THE COURT: They can come on in if they want to.

MR. MOORE: Judge, I am going to be very brief. It has taken longer than anyone expected it to. I know the primary concern of the Court is the best interest of the child. And in considering the best interest of the child, I don't think the law is set up for the Court to make a decision that will place the child in a better social strata or under a better financial situation that he was born into. I think the Court, in taking the best interest of the child into consideration, should consider whether or not the child is going to be living with his own people, with his own blood. That seems to make no difference to the Christian Homes. Maybe they have become hardened after adopting out so many children. My family and my blood mean a

great deal to me. And I think [179] that's important. I think it should -- I think that this boy and his family are very concerned about that child, he about his daughter, they about their granddaughter, and about what is going to become of her. They don't know Christian Homes, and they don't know what kind of a situation that they are going to put that child in.

No matter what the situation is, they feel like the child would be better off with its own people, with them. Now, maybe they don't have the finest home. It may be an old home. But I don't think the Court will have any problem knowing what kind of people that these folks are: third or fourth generation farm people from Nebraska; they are honest, hard-working people. They have raised seven children of their own in that very house. This boy doesn't have to stay in that house. He

can stay there; he can move out; he can move down the road, get his own place.

There is no reason why a single parent who is twenty-five years old, mature, responsible, cannot raise this child and do a good job of it. And I think the Court should give some consideration to the fact that it is his child. It's his. He is the biological father. I feel like that he should be given more consideration than what the law seems to accord him in the books. The objection of the Christian Homes to him being the managing conservator, the child being legitimated and him being named the managing conservator, is [180] his vacillation about making his decision, which I think has been reasonably explained away, and the fact that he is a single parent. I ask the Court very earnestly, in making your decision about the best interest of this child, to consider

that this child is from his own loins.

Thank you, Judge.

MR. MYERS: Your Honor, first of all, I will also likewise try to be as brief as possible. Mr. Moore seems to think that Mr. Kirkpatrick should be given more consideration than the law gives him. The Supreme Court of Texas has recently spoken on this precise question that we have as to whether or not a biological father should be given the same type of rights as a mother, a parental right. And what we are talking about this afternoon, of course, is whether or not he is entitled to have that relationship established.

Now, the Court is guided in looking at two things in determining that. Number one, as stated in the case at 535 SW2d 168, the Court has the discretion to see, number one, that the one who would seek to as-

sume the parental rights and responsibilities is fit to do so. That's the first hurdle we have to make. And then number two, if that person is fit to do so, whether or not it will be in the best interests of the child to allow that person to establish the parent-child [181] relationship. I don't believe that Mr. Moore, through his testimony of his client and his witnesses, has shown by a preponderance of the evidence -- And the burden of proof in a cause like this is upon the petitioner, in this case the cross-petitioner, to prove by a preponderance of the evidence that it is in the best interests of the child to allow him to legitimate the child, to allow him to establish a parent-child relationship.

The cases also speak in terms of the wishes of the mother. The cases talk about the strong weight that should be given to

the mother, because she is the person who has borne the child and has cared for the child, not just the biological father. The biological father has no responsibility until the Court says that he has the responsibility to do so.

In this case the wish of the mother, R S , is that the child be allowed to be placed with Christian Homes and to be placed for adoption. This does not mean that she does not love her child, that she does not care just as deeply for the child as any other mother in the world does. I believe that she cares for the child more. She cares for him so much that she wants the very best for him, and that is why she is contesting this proceeding. She knows Donald Kirkpatrick better than anyone in the courtroom, and she knows that to allow his petition would not be in the best interest of the child. And I believe that

she loves that child so much that [182] if she did feel that it would be in the best interest of the child to allow Donald to be successful in this action that she would say so, and she would not have pursued this matter as far as she has.

Christian Homes of Abilene has a good track record. They screen the families very well. They place the child in the best situation possible, and in this case they have even gone so far as to choose prospective parents. If this Court sees fit to deny the petition this afternoon, there is a parent waiting in the wings, two parents waiting in the wings, to take care of this child.

We have heard testimony from R , from the S , and from Ms. Miller as to the best interest of the child. I would just ask the Court to weigh their testimony: the emotional testimony of Mrs.

', the very expertly-given testimony of Ms. Miller, with all of her vast dealings in cases like this, and compare that testimony to the testimony of the Kirkpatricks and the testimony of Donnie. I hope this Court will be, and I trust the Court will be guided in making the right decision in determining that it would be in the best interest of this child to not allow the petition of Donald Kirkpatrick and to allow Christian Homes to place this child in a suitable home. Thank you.

THE COURT: Mr. Brown, do you have any [183] argument?

MR. BROWN: Just two things, your Honor. First, as the attorney ad litem for R being a minor mother, I would suggest to the Court that the evidence has shown sufficiently that she was aware of what she was doing and did voluntarily and

understandingly relinquish her parental rights. And certainly, in considering her interests, I would ask the Court that in the event the Court should decide to grant the motion of Donald Kirkpatrick that, then, in that event, that my client's parental rights not be terminated so that as between the two parents in that event some further disposition might be either worked out or further pursued in the courts.

THE COURT: Mr. Schulz.

MR. SCHULZ: If it please the Court.

I know the Court is familiar with the law that there is no presumption that legitimation is in a child's best interest. In this instance, however, how fortunate is this child that so many people are truly interested, apparently, in the child's best welfare. I know the Court will weigh

the evidence and come to a just decision as to what is in the best interest of the child. That is my sole aim here, is to protect the child.

THE COURT: Is that enough argument for [184] everybody? All right.

I purposely asked that the grandparents come in. They came here as witnesses and are very interested in the outcome of this case and very interested in the best interests, I believe, of this child. I -- You know, I could take this thing under advisement and sit on it for a day or two, or a week, and leave everybody in suspense, and write the attorneys, and that would be the easy way for me to do it. However, I don't believe that is what I was put on this bench to do, and I am going to go ahead and render a decision.

Let me state initially that I think

both of these families are fine families. I respect farming people. I've got farming people in my family and in my wife's family, and I can understand the problems that arise in living with a house that was constructed in 1905. I think you are fortunate to still have that house.

I think that this young man here is doing a good job with his life. He is apparently working hard on that farm, and he is going to make something of himself. And I believe that the S have the best interest of the child, also, in mind, and the child's mother, R , has the best interest of the child in mind.

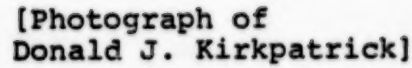
The Court finds that this young man here would, in fact, be a proper person to have parental rights under perhaps other circumstances, if it was other circumstances. [185] Those circumstances do not now exist.

It will be the order of this Court that the parental rights of R S will be terminated as alleged in the petition and that the petition for legitimation will be denied. The Christian Homes will be appointed managing conservator of this child.

I wish I didn't have to make decisions like this. This is probably as hard a decision as I have made since I have been on the bench, and I -- You know, it fell in my lap, and there I am, and I've got a child in the middle. I just hope I am making the right decision for this child. Thank you.

---

[186] PETITIONER'S EXHIBIT NO. 1


[Photograph of
Donald J. Kirkpatrick]

[187] PETITIONER'S EXHIBIT NO. 2

PX2
8-28-81

" "

Hospital	1,663.90	
Dr. Estes	450.00	
Pharmacy	30.69	
Total Medical	2,144.59	
Maternity Home Care - 5 mos.	1,500.00	
Less payments	500.00	
Total Resid. Care	1,000.00	
Total-Lin		3,144.59
Baby Girl		
Hospital	177.85	
Dr. Barron, Pope	313.00	
Pharmacy	41.49	
Legal	40.00	
Abilene Pediatric	42.00	
Radiology Assoc.	32.50	
Total Medical	646.84	
Foster Care	464.60	
Total-Baby		1,111.44
Total - and Baby		4,245.03

[188] CROSS-PETITIONER'S EXHIBIT NO. 1

TEXAS DEPARTMENT OF HUMAN RESOURCES

June 15, 1981

Honorable Henry J. Strauss
Judge 326th District Court
Taylor County Courthouse
Abilene, Texas 79602

RE: Cause No. 5038-C
In the Interest of Baby Girl S
Disputed Custody Study

Dear Judge Strauss;

Attached is the Social Studies requested on Christian Homes of Abilene, and Cross Petitioner, Donald J. Kirkpatrick of York, Nebraska. The Social Study of Donald J. Kirkpatrick was prepared by Karolyn K. Rehor, Social Service Worker II of the Multi-County Service Unit #151 of Seward, Nebraska.
If I can be of any further assistance, please feel free to contact me at 673-7811 or 677-1711, extension 351.

Sincerely,

/s/
Elaine Fitzgerald
Child Placement Worker I

APPROVED BY
/s/
Brenda Harlow
Supervisor

SOCIAL STUDY

Cause No. 5038-C

IN THE MATTER OF CROSS-PETITIOER CHRISTIAN HOMES OF ABILENE	JUDGE HENRY J. STRAUSS, PRESIDING JUDGE IN THE 326TH DISTRICT COURT OF TAYLOR COUNTY, TEXAS
AND IN THE INTEREST OF BABY GIRL S , A CHILD	

PURPOSE:

This social study into the circumstances and conditions of the child involved in this suit, and of the agency seeking managing conversatorship is respectfully submitted to Judge Henry Strauss as requested.

Comes now Elaine Fitzgerald, caseworker of the Taylor County Child Welfare Unit, duly appointed investigator in the above matter, and presents the following report:

Christian Homes of Abilene, a private child-placing agency, was established by the Highland Church of Christ. It works under the direction of its Elders. The family service agency is licensed for foster care, adoptive placement, maternity care for unmarried pregnant girls, and a contract with the Department of Human Resources to place special needs children.

Licensing Standards:
In December of 1962, Christian Homes of Abilene received its charter (verified). The Child Care Committee became the administrative board, and the Highland Elders became, for legal purposes, the Board of Trustees for the agency.

In September of 1964, the agency was licensed by the State Department of Public Welfare, which licensed it for foster care and adoptive placement.

The Department of Human Resources issues Christian Homes of Abilene a license every two years, assuming they meet the minimum health and fire inspections. During each year the Department of Human Resources makes three routine inspections of the Christian Homes of Abilene. Other requirements that must be met every two years include: minimum organization and administrative requirements, home standards, and adoptive home standards.

The Christian Homes of Abilene Maternity Home is licensed by the States Department of Health. The license is renewed once a year, providing it meets the inspections that are made twice yearly. The requirements that Christian Homes of Abilene must meet include basic sanitation and dietary requirements. Admittance of a woman to Christian Homes of Abilene must be ordered by a doctor. All medical needs must be stated before a woman is admitted to Christian Homes.

Goals of Christian Homes of Abilene:

1. To provide counseling services to disentegrating families in an effort to keep the children with their own families. 2. To offer child care services to children needing placement away from their families through foster family service, adoptive placement, or placement in a motherhood children's home. 3. To provide care and counseling for girls who are pregnant outside of marriage.

Adoption Services:

The services of Christian Homes of Abilene are available to children of all ages, races, and religions. The adoptive parents must be 21 years of age and have been married for three years. Because Christian Homes of Abilene is supported primarily by the Churches of Christ, preference is given to them in placing children for adoption.

Foster Care Services:

Children of all ages, races, and religions are accepted for foster care. The children come for temporary care through voluntary agreement or relinquishment from parents or by court order through the Department of Human Resources.

All foster homes must be licensed by the State through Christian Homes. A caseworker supervises the homes, and is available for counseling and support. Foster families must live within a 75-90 miles radious of Abilene.

Maternity Care:

The services available to unwed parents include counseling for them and their families, and residential care for the unwed mother. Counseling is provided to enable the unwed parents in making important decisions for themselves and their babies. School-aged girls may continue their education while at the home.

The following information was supplied by Nancy Miller, Executive Director of Christian Homes of Abilene. Christian Homes of

Abilene is comprised of the following: Executive Director, Nancy Miller; Joe Griffin and Andy Bolton, Board of Directors; a Board of Trustees which includes 13 members, and an Administrative Board of 18 members.

Ms. Miller stated that Christian Homes of Abilene has had approximately 485 unwed mothers in their homes. In the foster care program she stated that they have cared for more than 800 children. In their adoption services they have placed approximately 500 children.

Ms. Miller stated that it costs approximately $400 per month to provide services in their maternity home. She explained that a portion of this is paid for by fees, and the rest of the amount is provided by church and individual loans.

Ms. Miller stated that there are three caseworkers employed by Christian Homes of Abilene. At this time Ms. Jeanie Bailey is the foster care worker. Ms. Vickie Cardol is employed as the maternity care worker, and Ms. Joe Griffin is the adoption case worker. Included among the employees are houseparents who work 100% for the girls.

Evaluation:

In addition to the services that are provided for by the State, Christian Homes of Abilene provides spiritual growth through the support of Christians in which it ministers to those who come to the agency for help. For over a decade Christian Homes of Abilene has channeled the faith and compassion of Christians into skillful services to families who need help.

/s/
Elaine Fitzgerald
Child Placement
Worker I
Taylor County Child
Welfare Unit

/s/
Brenda S. Harlow,
Supervisor
Taylor County Child
Welfare Unit
Texas Dept. of
Human Resources

STATE OF TEXAS
COUNTY OF TAYLOR

Before me, the undersigned authority, on this day appeared Elaine Fitzgerald, known to me, who being first duly sworn under oath, deposes and says that she is the person whose name is signed to the foregoing report, and that the statements therein contained are true and correct to the best of her knowledge and belief.

/s/
Elaine Fitzgerald

Sworn to and subscribed before me, the undersigned authority, on this the 16th day of June, 1981.

/s/
Crika Hartness, Notary Public
In and For Taylor County, Texas

MULTI COUNTY SOCIAL SERVICE UNIT #1 1
MULTI COUNTY SOCIAL SERVICE UNIT #151

Homestudy

Date Prepared: June 3, 1981

Prepared By: Karolyn K. Rehor, Social
Service Worker II
Multi County Service Unit #151

Prepared For: Honorable Henry J. Strauss
326th District Court Judge,
Taylor County
Abilene, Texas 79602

I. HEADING

Donald J. Kirkpatrick
DOB: April 08, 1956
Rural Route 1, York, NE
York County Nebraska
Telephone: 402-362-2424

II. SOURCES OF INFORMATION

Mr. Donald J. Kirkpatrick, Cross-Petitioner, was interviewed in his home May 28, 1981, in York, Nebraska.

III. REASON FOR REQUEST

This homestudy was ordered to determine if Mr. Kirkpatrick should be granted legitimation of his daughter, Baby Girl S , born out-of-wedlock. The Court has ordered that this homestudy address the areas of the suitability of Mr. Kirkpatrick's home for the child.

IV. REASONS FOR WANTING CHILD

Mr. Kirkpatrick indicated that his parents, and siblings are supportive of his desire to the legitimization of his daughter. Mr. Kirkpatrick said his mother is more neutral, and wants him to make the decision himself, although she is very willing to help him should he receive custody of his child. Mr. Kirkpatrick's father however, is more vocal as to his feelings: Mr. Kirkpatrick said his father feels Donald should 'look out' for his own daughter and questions Donald as if he could live with the knowledge that his daughter is living with strangers (non-relatives).

Mr. Kirkpatrick stated he would live at his parents home until he could handle all the responsibilities of caring for his infant daughter himself. His sister, age 20, also lives with his parents, and has agreed to provide daycare for his child while he is working. (Mr. Kirkpatrick's mother works outside of the home, but would apparently be willing to resign to help care for the child should it become necessary.)

Mr. Kirkpatrick said he has plans of telling his daughter about her mother and the relationship between her mother and himself. He wants his daughter to understand the circumstances pertaining to her birth and that her mother is a good person and someone she should love.

V. DELINEATION OF DONALD J. KIRKPATRICK

Education: Donald graduated from York High School in 1975.

Work Experience: Mr. Kirkpatrick has been engaged in farming since graduating from High School.

Military: Not applicable.

Health: Mr. Kirkpatrick has epilepsy, due to this condition he takes medication twice daily. He reports he has not had any seizures for 1-1/2 years.

Donald reports his general health to be good.

Social Pathology: None reported.

Personal Qualities: Mr. Kirkpatrick described himself as a quiet person, but one who enjoys helping others. He said he feels more comfortable in smaller groups.

Donald also expressed to me that he has been depressed lately due to the circumstances of R 's pregnancy and the birth of his daughter. However, he feels that once things are finalized, he will be able to accept the court's decision and go from there. He feels right now that his life is in Limbo, not knowing if he will receive custody of his daughter or not.

VI. CHURCH

Mr. Kirkpatrick is not affiliated with any church.. He said he would not hinder his daughter's desire to attend the church of her choice; however, this

would be her decision.

VII. OCCUPATION/INCOME

Mr. Kirkpatrick farms with his father. The operation is mostly livestock farming with limited grain farming.

Donald said his income varies each year due to the fluctuating livestock market.

Mr. Kirkpatrick reported his approximate gross income in 1979 was $16,000.00, and in 1980 $10,000.00. Donald said he has no outstanding debts, everything he owns is paid in full.

Mr. Kirkpatrick said he feels that he could adequately support his daughter on his earnings.

While R was in Texas awaiting the birth of their child, Donald kept in touch with her via letters and telephone calls. Donald also mentioned that he often enclosed money to R when he wrote her.

According to Donald, he had asked R 's parents if he could pay for R 's Doctor bills and her room and board payments, but her parents refused his offer.

Since February, 1981, Mr. Kirkpatrick has sent $100.00 per month to the District Court in Abilene, Texas, for the support of his daughter.

VIII. MARITAL INFORMATION

Mr. Donald J. Kirkpatrick has never been married. He still desires to marry R S , the mother of his child, however, R does not feel ready to marry due to her age, according to Donald.

Donald and R had dated steadily for two (2) years prior to her moving to the Christians Homes of Abilene, Texas to deliver her child. This couple have had contact once in R 's parents' home since she returned to York.

IX. EXPERIENCE WITH AND ATTITUDE TOWARDS CHILDREN

Donald Kirkpatrick stated he has had some experience with small children. He was able to help his parents with some child care duties when his youngest sister was growing up.

Donald said his parents were firm in their discipline of their children without being strict. He feels a child should never be spanked or struck. He feels parents should put limits on a child, and should administer discipline by discussion, sitting them on a chair and other similar acts.

X. WORKER COMMENTS

In my opinion, it appears that Donald J. Kirkpatrick is feeling quite guilty about the event of his daughter's birth. Although he has never seen

his daughter, he expresses much concern over her and has expressed this financially to the Court. I do believe that he is sincere in his desire to want what is best for his daughter's future, whether it is with him or with an adoptive family.

Ideally Mr. Kirkpatrick would like to marry R , receive custody of their daughter, and set up a home together. However, Mr. Kirkpatrick did not forsee this as becoming a reality in the near future, and expressed some doubt as if R would ever marry him.

Mr. Kirkpatrick had talked to R after her return to York about his desire to receive custody of their child. Mr. Kirkpatrick told me that R did not wish him to receive custody of their child, or have his parents help raise the child.

Donald stated he does not feel badly toward R for relinquishing their child, and said he feels R made the right choice if she did not feel she was capable at this time in her life to have the responsibility of a child. Donald said he feels very responsible for what has happened to R since he was "older and should have known better".

In my opinion, the suit brought by Christian Homes of Abilene, Inc., in which they quote Section 15.02(H), is not accurate in that Mr. Kirkpat-

tick did not abandon his child's mother during her pregnancy (he corresponded with her via letters and telephone), nor has he failed to provide adequate financial support for his child since he was made aware of her birth.

In my judgment, Mr. Kirkpatrick could adequately provide for his daughter's emotional, physical, and financial needs should the Court grant him custody of his daughter, Baby Girl S .

Mr. Kirkpatrick is awaiting notification of the Court hearing date, as he is making arrangements to attend.

/s/
Elaine Fitzgerald
Child Placement Worker I
Taylor County Child Welfare Unit

STATE OF TEXAS
COUNTY OF TAYLOR

Before me, the undersigned authority, on this date appeared Elaine Fitzgerald, known to me, who being first duly sworn under oath, deposes and says that she is the person whose name is signed to the foregoing report, and that the statements therein contained are true and correct to the best of her knowledge and belief.

/s/
Elaine Fitzgerald

Sworn to and subscribed before me, the undersigned authority, on this the 16th day of June, 1981

/s/
Notary Public
In and For Taylor County, Texas

FILED

AT 8:55 O'CLOCK AM

JUN 17 1981

IRENE CRAWFORD

DISTRICT CLERK, TAYLOR COUNTY, TEXAS

/s/ DEPUTY

5038-C

[189] AGREEMENT OF COUNSEL

It is agreed by and between the parties hereto that the above and foregoing is a full, true, and correct statement of facts adduced upon the trial of said cause.

Mr. Ed Myers

Mr. Sam Moore

Mr. Stan Brown

Mr. Malcolm Schulz

APPROVAL OF THE COURT

The above and foregoing transcript examined, found correct, approved, and ordered filed as the Statement of Facts in this cause, this the ___ day of _____ 19____.

Billy John Edwards
Judge Presiding

[190]
THE STATE OF TEXAS)
)
COUNTY OF TAYLOR)

I, Lana Trigg, a Certified Shorthand Reporter in and for the State of Texas, do hereby cerfity that during the hearing of the above-styled and numbered cause I took shorthand notes of the proceedings upon said hearing and have transcribed same as shown by the above and foregoing 190 pages, and that said Statement of Facts is full, true, and correct.

This 28th day of October, 1981.

/s/
Lana Trigg, C.S.R.
Official Court Reporter
104th District Court

COST of this statement of facts:
$570.00, paid by Cross-Petitioner

In Re: Baby Girl S, A Child

No. 11-81-157-CV -- Appeal from Taylor County

Christian Homes of Abilene, Inc., brought suit to terminate the parent-child relationship of an infant girl, B.G.S. The unmarried biological father filed a cross action seeking to legitimate the child and gain her custody. Following trial before the court, judgment was entered that the parent-child relationship between the mother and B.G.S. be terminated; the father's petition to legitimate be denied and all his rights to the child be foreclosed; and Christian Homes be appointed managing conservator of B.G.S. The biological father appeals. We affirm.

In his first point of error the biological father contends that the trial court abused its discretion by denying

the petition for voluntary legitimation.

At the time of the hearing, August 8, 1981, the natural mother was only sixteen and the biological father was twenty-five years old. They had met through the father's sister and had a premarital sexual relationship for at least a year and a half before the child was conceived in April, 1980. After being aware of her pregnancy, the girl considered and discussed her alternatives with her parents and the father and chose to go to a home for unwed mothers operated by Christian Homes. She concluded after additional counseling regarding whether she should keep the child or permit its adoption that it would be in the best interest of the child to relinquish her parental right and allow the child to be adopted. After the birth of B.G.S., the mother executed an Affidavit of Relinquishment of Parental Rights pur-

suant to TEX. FAM. CODE ANN. § 15.03 (Vernon Supp. 1981).

At the hearing the biological father testified: "All I can say is I love my daughter and I want her, and she's blood, and I just can't see letting her go when I want to raise her myself." His plans included returning with her to the same small town where the illicit sexual activity occurred and included the assistance of his mother and sister in the rearing of the child. Although the biological father testified as to his readiness to pay all cost involved in the pregnancy and the delivery and care of the child and her mother, there had never existed a family relationship between himself and the child. The biological father had a form of epilepsy called grand mal which was controlled with medication.

The testimony reflects that the parents of the mother disapproved of the relationship between the mother and the biological father and forbade the consumation of a marriage relationship. It was the mother's desire that the child be adopted and reared in a two-parent Christian family. The mother herself was an adopted child and was aware of the stigma under which an illegitimate child suffers. She testified that in her opinion adoption would serve the best interest of the child. Her parents were supportive of the mother and her decision.

TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981) provides that in a voluntary legitimation suit where the mother or managing conservator fails to give consent to the legitimation by the biological father, the court may consent to the legitimation provided the entering of such a decree is in the best interest of

the child. (Emphasis ours)

As stated by the court in Travis County Child Welfare Unit v. Vance, 566 S.W.2d 112 (Tex.Civ.App. - Austin 1978, no writ): "It is the child's best interest, and not the interest of the biological father, which must be served by legitimation. § 13.21(c)."

The Texas Supreme Court in In the Interest of T. E. T., 603 S.W.2d 793, cert. denied, 450 U.S. 1025 (1980), considering the child's best interests said:

> It is easy to understand her decision here that it would not be in the child's best interest for her to be turned over to the nineteen-year-old father and be reared by him in the small town where the illicit sexual activity occurred. On the other hand, the best interests of the illegitimate child will more likely be served by her adoption into a family who will give her the stability of a normal, two-parent home. Moreover, adoption will remove the stigma under which an illegitimate child suffers.

We have carefully reviewed all the

evidence and find no abuse of discretion by the trial judge in denying the petition for voluntary legitimation. In the Interest of C.D.V., 589 S.W.2d 543 (Tex. Civ.App. - Amarillo 1979, no writ).

The first point of error is overruled.

In his second point of error, the biological father urges:

> Section 13.21, Voluntary Legitimation, Family Code, V.A.T.S., is unconstitutional in that it violates the equal protection and due process clause of the fourteenth amendment to the United States Constitution.

This contention has been overruled by the Texas Supreme Court in In the Interest of T. E. T., supra. There the court said:

> The narrow issue before us is whether the gender-based distinction of the Texas statutory scheme for establishing status as a parent is substantially related to the important state objective of promoting the best interest of children born out of wedlock and is substantially related to the achievement of this objective. We

hold that it is so related.

* * *

> The biological father was given timely notice of the proceedings to terminate the mother's parental rights and, in response, brought suit as permitted under the Texas Family Code to legitimate the child. He thus had the procedural due process required by Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

The second point of error is overruled.

Next, appellant argues that the court erred in overruling his motion for amended or more specific findings of fact and conclusions of law.

The court in City of Fort Worth v. Bewley, 612 S.W.2d 257 (Tex.Civ.App. Eastland 1981, writ ref'd n.r.e.), considering such a point of error, said:

> Additional findings are not required where the requests do not relate to ultimate or controlling issues, or where they conflict with the original findings of fact which were made and filed by the trial judge. State v. Wiergate Lumber Company, Inc.,

> 582 S.W.2d 258 (Tex.Civ. App. - Beaumont 1979, writ ref'd n.r.e.).

In the case at bar, the additional findings and conclusions either conflict with the original findings and conclusions, or do not relate to the ultimate or controlling issue in controversy. The point of error is overruled.

Finally, in a supplemental brief the biological father contends that:

> Section 13.2., Voluntary Legitimation, Family Code, V.A.T.S., is unconstitutional in that it violates Texas Constitutional Article 1, Section 3-A, the Texas equal rights amendment.
>
> The amendment states:
>
> Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. This Amendment is self-operative.

The court in Mercer v. Board of Trustees, North Forest Independent School District, 538 S.W.2d 201 (Tex.Civ.App. - Houston [14th Dist.] 1976, writ ref'd

n.r.e.), considered whether a regulation regarding school hair length violated the Texas Equal Rights Amendment. After thorough consideration and comparison of similar enactments by other jurisdictions as well as federal court decisions the court said:

> We cannot agree with the Supreme Court of Washington that the ERA admits of no exceptions to its prohibition of sex discrimination. Any classification based upon sex is a suspect classification, and any law or regulation that classifies persons for different treatment on the basis of their sex is subject to strictest judicial scrutiny. Any such classification must fall unless the party defending it can show that it is required by (1) physical characteristics, (2) other constitutionally protected rights such as the right of privacy, or (3) other "compelling reasons." With respect to "physical characterstics" we are simply recognizing the facts of life. For us to adjudicate that women are men would be as futile as it would be absurd. Neither the ERA nor the rights established by it require us to construe it so as to deny sexual or reproductive differences between the sexes. Nor does the ERA require that such rights so established (and so long

> denied) be enforced where they come into conflict with other basic fundamental constitutionally-protected rights such as that of privacy. To justify a suspect classification by "compelling reasons" places the burden of proof and persuasion on the party defending the classification.

We hold that TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981) meets the "other compelling reasons" test as set forth in Mercer and, therefore, does not violate the Texas Equal Rights Amendment. The compelling reason is the important state objective in promoting the best interest of children born out of wedlock.

As stated by the court in In the Interest of T. E. T., supra:

> (T)he State has a legitimate interest in protecting the children who are born as a result of premarital sexual activity. The mother, by virtue of her pregnancy, is automatically responsible for the child. She has the physical burdens and responsibilities of the pregnancy. She can choose to abort the child or

she may carry it full term. The State has a substantial interest in encouraging the unwed mother to properly care for the child by assuring her that her wishes as to the disposition of the child will not, absent her consent or a finding of the child's best interest, be subject to the absolute veto of the biological father. This statute is substantially related to the achievement of that interest.

On the other hand, the biological father is not automatically responsible for the child. He may not have an interest in legitimating the child. He may not promptly disclose his interest in the child. In most situations, he can wait until after the child is born before committing himself. While the mother who is unmarried and pregnant is trying to figure out what she will do with the child, the father is totally free from any responsibility with respect to the child. To classify him as a parent simply because he is the biological father would give him a powerful club with which he could substantially reduce the options available to the unmarried mother. All must agree that an unmarried fourteen-year-old high school freshman has a serious problem when she discovers she is pregnant and she needs all the options that the State can properly make available to her.

The court in In the Interest of K., 535 S.W.2d 168, cert. denied, 429 U.S. 907 (1976) said:

> There is a rational basis for the state, which has an interest in securing stable homes and supportive families for children, to distinguish between the father who has accepted the legal and moral commitment to the family and the father who has not done so....Texas law offers the biological father of an illegitimate child the opportunity to prove...that he should not be treated differently from fathers legally committed to the mothers of their children....Thus S.D.A. sought and received a fair hearing....the denial of his petition for parental status was shown to be in the best interest of the child. His rights have been respected. The rights of society and baby girl K permit him nothing more.

The point of error is overruled.

Our holding on the points of error presented by appellant make it unnecessary to consider appellee's cross-point contending that appellant did not comply with the requirements of TEX. FAM. CODE ANN. § 13.21 (Vernon Supp. 1981).

The judgment is affirmed.

/s/

RALEIGH BROWN

ASSOCIATE JUSTICE

February 11, 1982

JUDGMENT

In Re: Baby Girl S., a child	X	From the 326th
No. 11-81-157-CV	X	District Court of Taylor County.
		February 11, 1982
		Opinion by Brown, A. J.

This cause came on to be heard on the record and the same being inspected, it is the opinion of the Court that there was no error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court be, and the same is hereby, in all things affirmed, in accordance with this Court's opinion. It is further ordered that the costs incurred by reason of this appeal be, and the same are hereby, taxed against appellant, Donald Kirkpatrick, principal, and Sam Moore and Jess Holloway, sureties on his appeal bond, for which let execution

issue, and that this decision be certified below for observance.

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

June 16, 1982

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of IN RE: BABY GIRL S, No. C-1190 was this day refused. No reversible error.

Very truly yours,

GARSON R. JACKSON,

Clerk

THE SUPREME COURT OF TEXAS
P.O. Box 12248 Capitol Station
Austin, Texas 78711

July 14, 1982.

Mr. Sam Moore, Attorney
P. O. Box 3819
Abilene, Texas 79604

Mr. Charles E. Meyers, Attorney
104 Citizens Bank Building
Abilene, Texas 79601

Dear Sirs:

The motion for rehearing in the case of IN RE: BABY GIRL S., C-1190, was this day overruled.

Very truly yours,

/s/

Garson R. Jackson,
Clerk